Province of
British Columbia

1985

Report on

Defamation

LAW REFORM COMMISSION OF BRITISH COLUMBIA

MINISTRY OF ATTORNEY GENERAL

86-03550/

LAW REFORM COMMISSION OF BRITISH COLUMBIA

REPORT ON DEFAMATION

LRC 83

October 1985

The Law Reform Commission of British Columbia was established by the *Law Reform Commission Act* in 1969 and began functioning in 1970.

The Commissioners are:

ARTHUR L. CLOSE, *Chairman*

RONALD I. CHEFFINS, Q.C., *Vice-Chairman*

MARY V. NEWBURY, *Commissioner*

Thomas G. Anderson is Counsel to the Commission.

Frederick W. Hansford is Staff Lawyer to the Commission.

Sharon St. Michael is Secretary to the Commission.

The Commission offices are located on the 5th Floor, 700 West Georgia Street, (P.O. Box 10135, Pacific Centre) Vancouver, B.C. V7Y 1C6.

Canadian Cataloguing in Publication Data
Law Reform Commission of British Columbia.
Report on defamation

Includes the report of the Committee on the Law of Defamation.
Includes bibliographical references.
"LRC 83".
ISBN 0-7718-8492-3

1. Libel and slander - British Columbia. I. Law Reform Commission of British Columbia. Committee on the Law of Defamation. II. Title.

KEB293.A72L385 1985 346.71103'4 C86-092000-3

TABLE OF CONTENTS

PAGE

PART I INTRODUCTORY NOTE 1
- A. Background to this Report 3
- B. The Committee 3
- C. The Commission's Approach to the Committee Report 4
- D. Two Issues 5
  - 1. The *Cherneskey* Provision 5
  - 2. The Rolled-Up Plea 6
- E. Acknowledgements 7

PART II REPORT OF THE COMMITTEE ON THE LAW OF DEFAMATION 9

I Terms of Reference and Composition 11

II Committee Procedures 12

III Summary of Conclusions and Recommendations 14
- A. Chapter IV: The Need for Reform 14
- B. Chapter V: The Distinction Between Libel and Slander 14
  - 1. The Present Law 14
  - 2. The Committee's Conclusions and Recommendations 14
- C. Chapter VI: Definitions 14
- D. Chapter VII: The Range of Plaintiffs 15
  - 1. Corporate Plaintiffs 15
  - 2. Class Actions and Group Defamation 15
- E. Chapter VIII: The Privilege Attaching to Reports 15
  - 1. Introduction 15
  - 2. Section 3 of the *Libel and Slander Act* 15
  - 3. Reports of Parliamentary and Legislative Proceedings 16
  - 4. Reports Privileged under s. 4 of the *Libel and Slander Act* 16
- F. Chapter IX: The Defence of Fair Comment 16
  - 1. The Elements of the Defence 16
  - 2. The Need for Reform 17
  - 3. Proof of Malice Defeating the Defence 17
  - 4. The Distinction between Fact and Comment 17
  - 5. Imputations of Dishonourable or Corrupt Motives 17
  - 6. Truth of the Facts Underlying the Comment 17
  - 7. *Cherneskey* v. *Armadale Publishers Ltd.* 17
  - 8. The Rolled-Up Plea 18
- G. Chapter X: Procedure and Limitation Periods 18
  - 1. Production of Radio and Television Tapes 18
  - 2. Section 5 of the *Libel and Slander Act* 18
  - 3. Notice Requirements 18
  - 4. The Notice Required in Actions Against the C.B.C. 18
  - 5. Prohibition of Jury Trials Against the Crown 18
  - 6. Limitation Periods in Actions Against the Media 18
  - 7. Jury Verdicts: Section 14 of the *Libel and Slander Act* 19
  - 8. Section 17 of the *Libel and Slander Act* 19
  - 9. Place of Trial: Section 18 of the Act 19
  - 10. Section 19 of the *Libel and Slander Act* 19
  - 11. Section 20 of the *Libel and Slander Act* 19
  - 12. Sections 12 and 13 of the *Libel and Slander Act* 19

PAGE
H. Chapter XI: Remedies 19
  1. Introduction 19
  2. Section 11 of the *Libel and Slander Act* 19
  3. Sections 15 and 16 of the *Libel and Slander Act* 19
  4. Punitive Damages 19
  5. Supreme Court Rule 37(25) 20
  6. Apologies and Retractions 20
  7. Unintentional Defamation and Offers of Amends 20

IV The Need for Reform 21

V The Distinction Between Libel and Slander 24
A. The Present Law 24
B. The Committee's Conclusions and Recommendations 25

VI Definitions 27

VII The Range of Plaintiffs 29
A. Corporate Plaintiffs 29
B. Class Actions and Group Defamation 29

VIII The Privileges Attaching to Reports 30
A. Introduction 30
  1. The Distinction between Absolute and Qualified Privilege 30
  2. The Meaning of Malice 31
  3. The Privileges Attaching to Reports 31
B. Section 3 of the *Libel and Slander Act* 32
  1. The Nature and Scope of the Defence 32
  2. The Committee's Conclusions and Recommendations 33
C. Reports of Parliamentary and Legislative Proceedings 35
  1. The Existing Law 35
  2. The Committee's Conclusions and Recommendations 36
D. Reports Privileged under Section 4 of the *Libel and Slander Act* 36
  1. The Nature and Scope of the Defence 36
  2. A Re-examination of the Scope of Section 4 38
  3. The Reply as a Condition of the Section 4 Defence 39
  4. The Committee's Conclusions and Recommendations 40
  5. Explanation of the Proposed New Sections 43

IX The Defence of Fair Comment 45
A. The Elements of the Defence 45
B. The Need for Reform 46
C. Proof of Malice Defeating the Defence 47
D. The Distinction between Fact and Comment 49
E. Imputations of Dishonourable or Corrupt Motives 49
F. Truth of the Facts Underlying the Comment 50
G. *Cherneskey* v. *Armadale Publishers Ltd.* 51
H. The Rolled-Up Plea 55

X Procedure and Limitation Periods 57
A. Production of Radio and Television Tapes 57
B. Section 5 of the *Libel and Slander Act* 57
C. Notice Requirements 58
D. The Notice Required in Actions Against the C.B.C. 58
E. Prohibition of Jury Trials Against the Crown 58

PAGE

F. Limitation Periods in Actions Against the Media 59
G. Jury Verdicts: Section 14 of the *Libel and Slander Act* 60
H. Section 17 of the *Libel and Slander Act* 60
I. Place of Trial: Section 18 of the *Libel and Slander Act* 60
J. Section 19 of the *Libel and Slander Act* 61
K. Section 20 of the *Libel and Slander Act* 61
L. Sections 12 and 13 of the *Libel and Slander and Act* 61

XI Remedies 62
A. Introduction 62
B. Section 11 of the *Libel and Slander Act* 62
C. Sections 15 and 16 of the *Libel and Slander Act* 63
D. Punitive Damages 63
E. Supreme Court Rule 37(25) 64
F. Apologies and Retractions 64
G. Unintentional Defamation and Offers of Amends 65

XII Conclusion 66

Appendices 67
A. *Draft Defamation Act* 67
B. *Libel and Slander Act* 76
C. *Uniform Defamation Act* 83
D. *Defamation Act, 1891* 91
E. *Law of Defamation Amendment Act, 1897* 95
F. *Law of Libel Amendment Act, 1888* (U.K.) 101
G. *Defamation Act, 1952*, (U.K.) 104
H. *Faulks Committee Draft Act* 113
I. Table Comparing Privileged Publications 133

TO THE HONOURABLE BRIAN R. D. SMITH, Q.C.,
ATTORNEY GENERAL OF THE PROVINCE OF BRITISH COLUMBIA:

The Law Reform Commission of British Columbia has the honour to present the following:

REPORT ON DEFAMATION

In 1983, the Law Reform Commission constituted a Special Committee to undertake an examination of the law in relation to defamation and to consider and report to the Law Reform Commission with its recommendations for its development and reform. This is the first time that the Commission has exercised its power under section 4 of the *Law Reform Commission Act* to appoint a committee charged with examining a discrete area of the law with a view to formulating recommendations for reform. The Report of the Committee was formally transmitted to the Commission in August of 1985. That Report has been carefully considered and the Law Reform Commission has adopted the conclusions and recommendations of the Special Committee. It therefore seemed appropriate to transmit the Committee's recommendations to you as part of a formal Report of the Law Reform Commission.

The Committee's Report is reproduced in full. It includes an appendix setting out draft legislation to implement the Committee's recommendations.

PART I

INTRODUCTORY NOTE

PART I INTRODUCTORY NOTE

A. Background to this Report

The common law recognized that damage to a person's reputation is as serious a matter as an injury to his person or damage to his property. Where that damage is caused by false or malicious utterances, a remedy in damages was made available. If the false utterance was written it was called libel; if spoken, slander. Collectively, these torts are called "defamation."

As with many other torts, the interests protected by the law of defamation are not absolute. The law must balance the need to protect a person's reputation from unjustified attack with its policy in favour of freedom of speech and the free dissemination of information. However, the law of defamation has not kept pace with technology, nor with the contemporary needs of a society in which the free exchange of ideas and information is crucial. The law of defamation is largely a creation of the 19th century, and its precepts do not always foster these policies. The law of defamation is, moreover, encumbered by antique and complex rules and procedures.

For a number of years the Law Reform Commission has maintained a particular interest in the law of defamation, with a view to profiting from law reform activity in other jurisdictions. In 1981, our attention was focussed on a discrete issue in this area, and in that year we issued our *Report on Cable Television and the Law of Defamation*.[1] A postscript to that Report contained the following observations:[2]

> This Report has been deliberately confined to a very narrow aspect of the law of defamation. This does not mean that we regard all other aspects of this body of law as satisfactory. Nothing could be further from the truth. The *Libel and Slander Act* and the body of law to which it relates both call for substantial modification. Our work on this project has heightened our appreciation of the defects and needless complexity that have emerged in the law of defamation. Moreover, a number of the persons who responded to the research paper suggested broader changes were desirable.
>
> Unhappily, this is a call for reform we are not able to meet at present. We see such a project as one to which we may well be able to give priority in the future when work now in hand is brought to completion.

Following the publication of that Report, the Commission received a number of submissions which emphasized the importance of a more general review of the law of defamation and urged us to give priority to a larger project on this topic.

B. The Committee

The Commission agreed that a general review of the law of defamation was desirable. Such a review would require the consideration of highly technical rules of practice as well as matters as fundamental as free speech and the protection of a person's reputation. The advice of persons expert in this field is of signal importance in such an undertaking. That consideration suggested a departure from the Commission's usual methods.

Section 4 of the *Law Reform Commission Act*[3] provides:

> 4. The commission may appoint committees, the members of which need not be members of the commission, and may refer any matter to committees for consideration and report to the commission. The Lieutenant Governor in Council may authorize the payment of travelling and out of pocket expenses incurred by the members of a committee in carrying out their duties.

---

[1] LRC 50 (1981).

[2] *Ibid.* at 16.

[3] R.S.B.C. 1979, c. 225.

Relying on that provision, the Law Reform Commission established a Special Committee to undertake an examination of the law in relation to defamation. Its mandate was to consider the law of defamation and report to the Law Reform Commission with recommendations for its development and reform. The Commission was anxious that the composition of the Committee be such that its credibility should not be open to question. The following criteria guided us in inviting individuals to participate in the work of the Committee. All members should be knowledgeable in the law of defamation. The experience of the members, over all, should reflect a balance in the sense that the Committee should be perceived as neither "pro-plaintiff" nor "pro-defendant." Finally, it would be useful if some of the members were familiar with the work of the Law Reform Commission and its approach. The Commission is gratified that so many eminent members of the legal profession were prepared to serve on the Committee.

After two years of sustained effort, the Committee submitted its Report on Defamation to the Commission on August 8, 1985. The composition and methodology of the Committee is set out in the Report itself, which is reproduced in whole in Part II.

C. The Commission's Approach to the Committee Report

The Committee's Report was subjected to a thorough review by the members of the Commission. This was followed by a meeting of the Commission with the Chairman and Secretary of the Committee. At this meeting, the Committee's work was the subject of detailed analysis and discussion. This was followed by further discussion of the Committee Report and the approach which the Commission should take to it. The conclusions arrived at are set out below.

When the Committee was constituted, its mandate was general and open-ended. It was intended that the Committee develop its own terms of reference. The knowledge and experience of the Committee members enabled them to identify those areas of law most urgently in need of reform. It was contemplated by neither the Commission nor the Committee members that every aspect of the law of defamation would be subjected to a minute and detailed inquiry. It would have been unrealistic to have expected a volunteer committee to assume such an onerous burden.

The areas selected for examination by the Committee are fully described in its Report. It is our conclusion that the choices which the Committee has made are eminently justifiable. Reasonable men may differ on how to delimit a study of this kind. Indeed, the Committee itself identifies a few areas in which no recommendations are made but which merit further study. In no case, however, are these areas in such urgent need of reform that action on the Committee's recommendations should be deferred pending further study. It may be that the Commission will be in a position, at some future time, to undertake an examination of these issues.

A fact which emerges clearly from the Committee's Report is that our existing *Libel and Slander Act*[4] is laced with anachronisms and is wholly out of tune with legislative developments in other jurisdictions during the last 50 years. Much of the Committee's effort was understandably devoted to examining and assessing approaches adopted in other jurisdictions to the reform of the law of defamation. The Committee's Report represents a synthesis of a substantial body of work and its recommendations are tailored to the needs of

---

[4] R.S.B.C. 1979, c. 234.

British Columbia. The Report represents a detailed examination of a number of facets of the law of defamation. The Commission endorses these recommendations. On only two issues do we have specific comments. We are, therefore, content to adopt the Committee's recommendations as our own. Accordingly, we have reproduced the Committee's Report as Part II of this Report.

The Commission's usual practice is to seek public comment before submitting a final Report to the Attorney General by issuing a Working Paper on the topic under review. In this case it was not thought necessary to follow that practice or to solicit respresentations from the public. The Committee, for the most part, confined itself to correcting technical procedural aspects of the law of defamation, as well as modernizing the drafting of the current *Libel and Slander Act*. Such issues tend not to be contentious. The Committee also relied heavily upon studies published in other jurisdictions, which were themselves the subject of much comment and debate, from which the Committee profited. Moreover, the members of the Committee were, themselves, sensitive to the diverse interests likely to be most affected by any reform of the law of defamation. It is, therefore, our view that further consultation is both unnecessary, and unlikely to uncover points not considered fully by the Committee in its deliberations.

D. Two Issues

While we endorse the Committee's recommendations, two aspects of the Committee's Report generated more intense discussion among members of the Commission. We would like to record our comments in this respect.

1. THE *CHERNESKEY* PROVISION

In Chapter IX of the Committee's Report, which concerns the defence of fair comment, the effect of the decision of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.*[5] is considered. The Committee recommended the adoption of a provision based on one developed by the Uniform Law Conference of Canada to reverse the *Cherneskey* decision, but which deviates from the uniform legislation in one respect. As a condition of the defendant taking advantage of the defence of fair comment, the Committee recommended that:

> The person expressing the opinion was correctly identified by name and address in the publication, provided the defence shall not fail by reason only that the person was not correctly identified if the defendant took reasonable care to verify the identity of the person expressing the opinion.

This recommendation requires the originator of the opinion to be identified in the statement giving rise to a defamation action. The Committee observed:

> We believe that this restriction, which denies the protection of the provision to those who publish anonymous opinions, is wise.

The Commission is in general agreement with the policy of this restriction, but its application to "name withheld by request" (N.W.B.R.) publications has led to some debate. A common example of such a publication is a letter to the editor in which the identity of the letter writer has been disclosed to the publisher who complies with a request that the writer's identity not be disclosed in the publication. Very often there are sound reasons for such a request. Disclosure might subject the writer to unnecessary embarrassment or harassment. Where the writer has something useful to say and his identity is irrelevant to the message, a publisher may well feel it proper not to disclose the writer's identify or address.

---

[5] (1978) 90 D.L.R. (3d) 321.

On its face, the restriction set out above would appear to apply to such publications. This could have the effect of forcing a publisher to decline publication of such letters, notwithstanding that they might merit publication. To that extent, the free transmission of ideas on important public issues may be discouraged.

We have been advised that the application of the restriction to N.W.B.R. letters was not specifically discussed by the Committee. Rather, their debate focussed on the restriction in the context of radio "open line" programs. It is uncertain whether, if N.W.B.R. letters had received such consideration, a special exception would have been made for them. This is a matter on which the opinion of the Committee members might well have been divided.

We have considered whether we should depart from the Committee's recommendation and create a special exception for N.W.B.R. letters. On the whole, our inclination is to adhere to the Committee's recommendation and create no special exception. The creation of such an exception would require the introduction of a procedure by which a person who asserted that he had been defamed in an N.W.B.R. letter could compel the publisher to disclose the identity of the writer for the purposes of commencing proceedings. It would also be necessary to define the consequences of a failure by the publisher to comply with such an order.

We are not convinced that such refinements are justified. They would add a further degree of complexity to an already technical Act. It must be remembered that the effect of the restriction is not to prohibit N.W.B.R. letters. It merely visits certain consequences on the publisher if such a letter contains defamatory matter. The practical affect of the restriction is likely to be that N.W.B.R. letters will be more carefully screened and vetted by publishers. It should be a relatively rare occurrence when the restriction presents serious difficulties.

2. The Rolled-Up Plea

In Chapter IX, the Committee also considers the "rolled-up plea," which it described as having been "universally condemned as an uninformative source of confusion and a trap for the unwary pleader. . . " The Committee recommended that the use of the rolled-plea should no longer be permitted. This is to be achieved by a provision in a new *Defamation Act* to the following effect:

> 12. The plea known as the rolled-up plea is hereby abolished.

We agree with the Committee's conclusions concerning the rolled-up plea, but there is some question whether the legislative language adopted by the Committee is sufficient to achieve this goal. It is not difficult to envisage a situation in which a defendant, perhaps through mistaken reliance on an old precedent, uses the rolled-up plea notwithstanding the prohibition. What approach would a court take to such a pleading?

There are two possible ways in which it might react. The first is to strike out the plea in its entirety, forcing the defendant to re-draw his pleadings in a way which does not invoke the rolled-up plea. The second possibility is that the courts might simply order the defendant to provide particulars of the kind now required to be pleaded under Supreme Court Rule 19(12)(b). If the latter view prevails, little will have been achieved.

We are advised that the Committee intended that the courts should take the former approach. We therefore think it appropriate that the implementing legislation mandate that result. The section of the draft Act which abolishes the rolled-up plea could be coupled with an explicit statement of the plaintiff's right to apply to the court to have the offending pleadings struck out. As this is essentially a drafting issue, we are content to flag it for the attention of legislative counsel.

E. Acknowledgements

The Commission was fortunate that a group of knowledgeable and uniquely qualified individuals agreed to serve on the Committee. The resulting Report is a reflection of the diligence and expertise which they brought to their task. We would like to express our gratitude to each member of the Committee for the time and effort which has been devoted to this study. Our particular thanks go to the Committee Chairman, Bryan Baynham and the Committee Secretary, Professor Jerome Atrens. Both made a very special contribution to the Committee's work.

We endorse the Committee's Report. Its conclusions and recommendations are also those of the Law Reform Commission.

ARTHUR L. CLOSE
RONALD I. CHEFFINS
M. V. NEWBERRY

September 26, 1985

PART II

REPORT OF THE COMMITTEE ON THE LAW OF DEFAMATION

CHAPTER I

TERMS OF REFERENCE AND COMPOSITION

By resolution dated April 13, 1983, made pursuant to section 4 of the *Law Reform Commission Act*, the Commission established the Committee on the Law of Defamation, and appointed Mr. Bryan Baynham as Chairman. The resolution requested the Committee to undertake "an examination of the law in relation to defamation", and "to consider and report to the Law Reform Commission with their recommendations for its development and reform."

The following persons were appointed to the Committee:

Bryan Baynham, Chairman
Barrie Adams
Jerome Atrens
Rees Brock, Q.C.
Peter Butler, Q.C.
Hon. Mr. Justice Esson
David Gooderham
Michael Hunter
Kenneth C. Mackenzie
Anthony J. Spence
Hon. Mr. Justice Taylor
Bryan Williams, Q.C.
John Laxton (appointed by resolution of April 28, 1983)

Because of conflicts with other duties, the following members subsequently resigned: Hon. Mr. Justice Esson, Michael Hunter, and John Laxton.

Arrangements were subsequently made for Professor Atrens to act as secretary and reporter of the Committee with responsibility for drafting the Report of the Committee.

While each of the members of the Committee prepared a discussion paper and participated in the formulation of the recomendations contained in this report, particular note must be made of the contribution of Professor Atrens. In keeping minutes of Committee Meetings, he succinctly captured the essence of our deliberations. His knowledge and research ensured that the Committee's recommendations were founded on a firm understanding of the existing state of the law. Most importantly, in drafting this report he was able to draw together the wide scope of the Committee's recommendations to produce a document that forcefully makes the case for reform of the law of defamation.

CHAPTER II
COMMITTEE PROCEDURES

The Committee's mandate from the Law Reform Commission was both broad and flexible, enabling us to define our own procedures and the scope of the work to be undertaken. This was done in a series of Committee and subcommittee meetings commencing with the first organizational meeting of the Committee on April 18, 1983.

We decided not to invite or receive submissions from outside persons or bodies. Since the Committee's task was to report to the Law Reform Commission, it would be the Commission's responsibility to decide what action to take on the Report, including whether or not to engage in consultations with other interested parties, such as the media.

We decided that it would not be feasible to undertake a review of all aspects of the law of defamation, most of which is governed by the common law. We concentrated our attention on the British Columbia *Libel and Slander Act*,[1] and the issues suggested by a review of that statute, and the legislative changes made or suggested in other common law jurisdictions. Eventually this evolved into a detailed study of the following topics:

The privilege attaching to reports of judicial and legislative proceedings.
Other reports privileged under section 4 of the *Libel and Slander Act*.
The range of possible plaintiffs, with special emphasis on the corporate plaintiff, and class actions.
Unintentional defamation.
Problems relating to broadcasting and communications technology.
The distinction between libel and slander.
Statutory definitions.
Procedural problems, including limitation periods.
Fair comment.
Damages.
Apology and retraction.

Each member of the Committee assumed responsibility for one of the topics listed above, prepared a discussion paper on the topic, and presented the paper at the Committee meetings. The Committee met on 12 occasions, beginning on May 28, 1983, and ending on June 27, 1984 to discuss these papers, and to formulate tentative recommendations and conclusions. The Committee reporter then prepared draft reports, based on these papers and preliminary decisions. The Committee met on several occasions at the end of 1984 and beginning of 1985 to consider these drafts and formulate recommendations and conclusions. The final draft of this Report to the Law Reform Commission was approved by the Committee in August, 1985.

The law of defamation has been the subject of many studies in this and other countries, and we gratefully acknowledge the assistance we received from this earlier work. In addition to the defamation statutes of other jurisdictions, we found the following sources particularly valuable:*

> The Uniform Law Conference of Canada, *Uniform Defamation Act*, 1962 Consolidation, as amended, 1979 [hereinafter referred to as the "Uniform Act"].

---

* The abbreviated citations of these sources are used throughout the footnotes.

[1] R.S.B.C. 1979, c. 234.

The Report on Defamation, 1983, prepared by the Saskatchewan Commissioners for the Uniform Law Conference of Canada, included as Appendix G in Uniform Law Conference of Canada, *Proceedings of the Sixty-Fifth Annual Meeting* (1983) at pp. 94–166 [Hereinafter referred to as the "*Saskatchewan Report*"], and the review of the discussion of that Report at the conference in 1984.

Report of the Committee on the Law of Defamation, The "Porter Committee" (London: H.M.S.O., Cmd. 7536, 1948) [hereinafter referred to as "*Porter Report*"].

Report on Defamation, New South Wales Law Reform Commission. (Government Printer, N.S.W., 1971).

Report of the Committee on Defamation, The "Faulks Committee" (London: H.M.S.O., Cmnd. 5909, 1975) [hereinafter referred to as the "*Faulks Report*"].

Unfair Publication: Defamation and Privacy, The Law Reform Commission of Australia, Report No. 11 (Canberra, Aust. Gov't. Pub. 1979) [hereinafter referred to as "*Unfair Publication*"].

Recommendations on the Law of Defamation: Report of the Committee on Defamation (Wellington, N.Z.: Gov't Printer, 1977) [hereinafter referred to as the "*New Zealand Report*"].

Report on Defamation, the Law Reform Commission of Western Australia (Perth, W.A.: Law Reform Commission, 1979) [hereinafter referred to as the "*Western Australia Report*"].

Various texts, most notably, *Gatley on Libel and Slander*, 8th edition by P. Lewis, (London: Sweet & Maxwell, 1981) [hereinafter referred to as "*Gatley*"]; Duncan and Neill, *Defamation* (London: Butterworths, 1978) [hereinafter referred to as "*Duncan and Neill*"].

We also gratefully acknowledge the assistance provided by the Law Reform Commission and its staff.

CHAPTER III SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

For the convenience of the reader we have prepared the following summary of our principal conclusions and recommendations, arranged according to chapter and headings.

A. Chapter IV: The Need for Reform

Many parts of the law of defamation are archaic, excessively technical, confusing and rigid. Some rules fail to maintain the proper balance between protection of reputation and freedom of speech. Most of the law of defamation is based on the common law. Defamation falls within provincial jurisdiction under our constitution, but legislation in this and other provinces modifies only a few aspects of the common law. We have not attempted to review all aspects of the law of defamation. We have concentrated our study on the British Columbia *Libel and Slander Act*, which in our view is in urgent need of reform, and on the legislative changes made or suggested in other common law jurisdictions. We recommend the repeal of the *Libel and Slander Act* and the enactment of a new *Defamation Act*, which we present in draft form in Appendix A.

B. Chapter V: The Distinction Between Libel and Slander

1. THE PRESENT LAW

Under the common law rules that govern in this province, defamation consists of two torts, libel and slander. Subject to refinements that make exact definition impossible, libel is defamatory matter in writing or other permanent form; the *Libel and Slander Act* makes defamatory matter in a radio or television broadcast libel. Slander is oral defamation, other than in a broadcast. Libel is actionable without proof of damage. Except for three situations, slander is not actionable without proof of special damage.

2. THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

Whatever value there may be in distinguishing between libel and slander is outweighed by the disadvantages of maintaining an ancient distinction that no longer has any logical or rational justification.

We recommend that the distinction between libel and slander should be abolished through legislation. Sections 1 and 2 of our proposed *Defamation Act*, would create one tort of defamation, which would include both slander and libel, and be actionable without proof of damages.

C. Chapter VI: Definitions

We recommend that the existing definition of "public meeting" in the *Libel and Slander Act* be retained unchanged in the new *Defamation Act*.

We recommend that the definitions of "broadcasting" and "broadcast" introduced by a recent amendment to the *Libel and Slander Act* be incorporated in the new *Defamation Act*.

We recommend further study of the definition of "public newspapers or other periodical publication," and that interested parties should be invited to make representations on the matter, and that in the meantime the existing definition should be used in the new Act.

We recommend that to simplify the wording of several provisions of the new Act a new definition of "public media" should be included in the Act for references to newspapers, periodicals and broadcasts.

We do not recommend a statutory definition of what is defamatory, because the common law appears to be satisfactory.

D. Chapter VII: The Range of Plaintiffs

1. Corporate Plaintiffs

We do not recommend any changes in the law governing the right of corporations to sue in defamation.

2. Class Actions and Group Defamation

We make no recommendations regarding class actions, hate literature or group defamation, because our discussions of these issues have led us to conclude that changes would involve fundamental alterations to the nature and scope of the tort of defamation, and because hate literature has recently been dealt with by a provincial statute.

E. Chapter VIII: The Privilege Attaching to Reports

1. Introduction

A privilege is a defence recognized by the law on the principle that there are occasions when it is in the public interest to promote freedom of expression or communication, even if individual reputation may be threatened. We have concentrated our attention on one aspect of the difficult and important law of privilege, the privilege attaching to certain media reports. Where a report is privileged the one who reports has a defence, regardless of whether the matter reported on is actionable. If a report is not privileged the general rule of liability applies: repetition of defamation is itself defamation. This type of privilege is of great importance to the media. It protects them from liability for reporting defamatory matter that originates with others, such as statements made in court, in the Legislature, or at public meetings of municipal councils. Media privilege promotes accurate and prompt dissemination of information on matters of public importance. A well-informed public is essential to a democratic society. The media should not be deterred from reporting information of immediate public importance because of fear of liability in defamation. Granting the media special protection through statutory privilege attaching to such reports is justified by the special public service which the media perform.

2. Section 3 of the *Libel and Slander Act*

Subsection 3(1) of the present Act makes fair, accurate, and contemporaneous reports in the media of court proceedings privileged. We believe that this is a valuable and necessary privilege that should be retained.

We recommend no change in the substance of section 3(1), but we propose that it should be re-enacted in a slightly different form as section 5 of the new Act.

Subsection 3(2), dealing with blasphemous and indecent matter, is an anomaly in the Act, and should be replaced by a new provision that recognizes the distinction between the tort and criminal aspects of the issue.

We recommend that section 3(2) should be repealed and replaced by section 24 in the new Act.

3. REPORTS OF PARLIAMENTARY AND LEGISLATIVE PROCEEDINGS

What is said in Parliament or a legislature is protected by absolute privilege. At common law fair and accurate reports of these proceedings are privileged, but the privilege is qualified, meaning that the defence will be destroyed by proof of malice (improper motive) on the part of the defendant. We considered, but rejected, the suggestion that the absolute privilege attaching to reports of court proceedings should be extended to media reports or live broadcasts of legislative proceedings.

We recommend, however, that fair and accurate reports of proceedings in Parliament and legislatures should continue to enjoy qualified privilege, and we recommend that in its application to the public media this privilege should be put in statutory form through the new version of what is now section 4 of the *Libel and Slander Act*, discussed under the next heading.

4. REPORTS PRIVILEGED UNDER SECTION 4 OF THE *LIBEL AND SLANDER ACT*

Section 4 of the Act attaches qualified privilege to fair and accurate reporting in the media of several types of proceedings, such as public meetings and municipal council meetings. The list of proceedings in the section has not been changed since the section was first introduced in this province in the 19th century. We believe that substantial change is required to expand the list of reports and other matters protected by the privilege, to clarify the law, and to draw a distinction between reports that are privileged without giving the plaintiff a right of reply, and reports that are privileged subject to a right of reply.

We recommend that section 4 should be repealed and replaced by sections 6, 7 and 8 in the new Act. The publication in the media of reports and other matters listed in section 6 should be protected by qualified privilege without right of reply, and those listed in section 7 should be subject to a right of reply.

The new provisions, like section 4, apply only to publications in the media, a recognition of the special responsibilities of the media in providing fair and and accurate reports of matters that are in the public interest. The new provisions greatly expand the list of matters covered by the privilege. The lists in sections 6 and 7 will also clarify the legal position of the media by precisely describing the matters that fall under the statutory protection. Such clarity is especially important in a statute that will be frequently consulted by members of the media without legal training. Although the privilege attaching to reports in the media will be greatly expanded we have retained the requirement of the present law that reports be "fair and accurate." We have also retained in the proposed new section 8 the rule that the privilege does not apply to "the publication of matter not of public concern and the publication of which is not for the public benefit."

F. Chapter IX: The Defence of Fair Comment

1. THE ELEMENTS OF THE DEFENCE

Unlike the statutory privileges discussed under the previous headings, which are restricted to the media, the common law defence of fair comment is available to any type of defendant. The defence is regarded as a cornerstone of the right of free speech. The defence is not limited, as its confusing name would suggest, to comments that are reasonable or acceptable by average standards. Any honest comment will qualify, provided the other elements of the defence are present, and the comment is not made for malicious purposes.

We have considered the basic requirements of the defence, and suggest several reforms, none of which will change the basic nature of the defence.

We recommend no change in the law governing what constitutes a matter of public interest for the purposes of the defence of fair comment.

2. The Need for Reform

In many respects the present law is unsatisfactory. It is unduly complex and technical, and some of the restrictions on the defence are inconsistent with its basic purpose of promoting free speech. The legislative changes we suggest are designed to clarify and strengthen the defence and bring this province in line with the reforms adopted in other jurisdictions.

3. Proof of Malice Defeating the Defence

We recommend that the present rule that malice destroys the defence of fair comment, and the rule that malice of one defendant does not destroy the defence for other non-malicious defendants should be retained.

We recommend that the burden of proving malice should remain, as under the present law, on the plaintiff.

4. The Distinction between Fact and Comment

Although drawing the distinction between fact and comment may be difficult at times, the distinction is fundamental to the defence and should be retained.

We recommend no change in the law on the need to distinguish fact from comment.

5. Imputations of Dishonourable or Corrupt Motives

It is generally assumed that the defence of fair comment does not apply to comments that impute corrupt or dishonourable motives to the plaintiff. We believe that the rule is an unnecessary complexity and an undesirable limitation on freedom of speech.

We recommend that the rule limiting the defence of fair comment where there are allegations of dishonourable or corrupt motives should be abolished by enacting section 9 of our proposed *Defamation Act*.

6. Truth of the Facts Underlying the Comment

We make no recommendation to change the basic rule requiring the defendant to prove the truth of the facts upon which the comment was based. We think, however, that the technical rule requiring strict proof of the truth of facts *published with* the comment should be abolished. The rule imposes an unfair disadvantage on the defendant who publishes facts with the comment.

We recommend that the common law rule requiring strict proof of the accuracy of all facts published by the defendant as the basis for the comment should be abolished by enacting section 10 of the new Act.

7. *Cherneskey v. Armadale Publishers Ltd.*

The controversial 1978 majority decision of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.* denies the defence of fair comment to a defendant, such as a newspaper editor, who publishes a comment of another, unless the defendant proves that the comment represents his honest opinion. This restriction on the freedom of the media and others to promote the dissemination of a wide variety of views on matters of public interest has been almost universally condemned. *Cherneskey* has been reversed by legislation in several jurisdictions in the country, and we recommend that the same be done in this province.

We recommend that the decision in *Cherneskey*, limiting the defence of fair comment where the defendant publishes the opinion of another, should be reversed by enacting section 11 of the new Act.

8. The Rolled-Up Plea

We recommend that Supreme Court Rule 19(12) should be repealed, and replaced by section 12 of the new Act, which will abolish the rolled-up plea.

G. Chapter X: Procedure and Limitation Periods

1. Production of Radio and Television Tapes

We recommend that legislation should be enacted to require production of tapes of broadcasts to those who believe they have been defamed, that representations should be made to the federal government requesting legislation to this effect, and that a rule to this effect should also be included as section 21 of the new Act.

2. Section 5 of the *Libel and Slander Act*

We recommend that section 5 of the *Libel and Slander Act* which requires that one clear day elapse between publication in the media and the issue of a writ, be repealed.

3. Notice Requirements

We recommend, that a requirement, such as that contained in section 14 of the Uniform Defamation Act, that the plaintiff give notice before launching action against the media, should not be introduced in this province.

4. The Notice Required in Actions Against the C.B.C.

We recommend that the federal government be requested to repeal s. 10 of the *Crown Liability Act*, which requires 90 days notice before launching action against a Crown agency such as the C.B.C.

5. Prohibition of Jury Trials Against the Crown

Federal and provincial legislation prohibit jury trials in actions against the Crown. We disapprove of this discriminatory treatment of actions against Crown agencies such as the C.B.C. The right to a jury trial in defamation actions should be retained and be available in actions against the Crown.

We recommend that Supreme Court Subrules 39(19) and (20), guaranteeing to both the plaintiff and the defendant the right to a jury trial in defamation cases, should be retained.

We recommend that section 4(3) of the British Columbia *Crown Proceeding Act* be amended to permit trial by jury in defamation actions against Crown agencies.

We recommend that the federal government be requested to amend section 13 of the *Crown Liability Act* to permit trial by jury in defamation actions against Crown agencies, such as the C.B.C.

6. Limitation Periods in Actions Against the Media

We recommend that there be no change in the *Limitation Act* provision that sets a two year limitation period for defamation actions.

7. JURY VERDICTS: SECTION 14 OF THE *LIBEL AND SLANDER ACT*

We recommend that the substance of section 14, preserving the rights of the jury, should not be changed, but that the language be modernized in section 13 of the proposed *Defamation Act*.

8. SECTION 17 OF THE *LIBEL AND SLANDER ACT*

We recommend that section 17 of the Act, dealing with obscene matter in pleadings, be repealed.

9. PLACE OF TRIAL: SECTION 18 OF THE *LIBEL AND SLANDER ACT*

We recommend that section 18 of the Act, restricting the place of trial in actions against the media, be repealed.

10. SECTION 19 OF THE *LIBEL AND SLANDER ACT*

We recommend that section 19 of the Act, giving the media the right to demand security for costs in frivolous actions, be repealed.

11. SECTION 20 OF THE *LIBEL AND SLANDER ACT*

We recommend the repeal of section 20 of the Act, a recommendation that is consequential upon our proposals to repeal sections 17, 18, and 19.

12. SECTIONS 12 AND 13 OF THE *LIBEL AND SLANDER ACT*

We recommend that sections 12 and 13 of the *Libel and Slander Act* should be included in the *Defamation Act*, as sections 20 and 3, respectively, with such amendments as are required to make them consistent with other provisions of the new Act.

H. Chapter XI: Remedies

1. INTRODUCTION

We have not been able to undertake a complete review of the important and difficult topic of remedies for defamation.

We recommend further study of the remedies appropriate for defamation.

2. SECTION 11 OF THE *LIBEL AND SLANDER ACT*

We recommend that section 11 should be included as section 16 in the new Act, in an amended form applicable to all actions, not merely to actions against the media.

3. SECTIONS 15 AND 16 OF THE *LIBEL AND SLANDER ACT*

We recommend that further study of sections 15 and 16, dealing with consolidated actions, be undertaken to deal with issues specified in the Report, and that in the meantime these provisions be retained in the new Act.

4. PUNITIVE DAMAGES

The House of Lords ruled in *Broome* v. *Cassell & Co*. that in assessing punitive damages in actions involving several defendants the amount awarded should not exceed that appropriate as against the least culpable defendant. We do not believe that this rule should be adopted in Canada.

We recommend that the law governing the manner of awarding and assessing punitive damages in actions involving more than one defendant be clarified by including section 22 of the new Act.

5. SUPREME COURT RULE 37(25)

We recommend that Supreme Court Rule 37(25), dealing with the making of statements in open court, should be repealed and replaced by section 23 in the new Act.

6. APOLOGIES AND RETRACTIONS

Although further study of apologies and retractions is needed, we believe that the existing rules dealing with apologies set out in sections 6 and 10 are unnecessarily confusing, technical and restrictive.

We recommend that ss. 6 and 10 of the *Libel and Slander Act* should be repealed and replaced by section 17 of the new Act.

7. UNINTENTIONAL DEFAMATION AND OFFERS OF AMENDS

We recommend that there should not be new legislation dealing with the issue of unintentional defamation, and that pending a review of this area of the law section 7 of the *Libel and Slander Act* be retained as section 18 of the new Act.

CHAPTER IV

THE NEED FOR REFORM

The law of defamation must strike the proper balance between protecting reputation and protecting freedom of speech.[2] This delicate balance requires frequent adjustment, because the important values it supports are constantly changing. What was once considered an actionable attack on character may no longer be so regarded.[3] What were acceptable limitations on freedom of speech in the nineteenth century may be detrimental to the public good of twentieth century Canada. On the other hand, the modern technology of mass communication has greatly increased the exposure that a defamatory statement may receive. National and international dissemination through the print or electronic media can damage reputation with an effectiveness and speed that was unimagined when the fundamentals of the law of defamation were established.

The flexibility that is justly the pride of the common law has frequently been absent in the law of defamation. Consider, for example, the difficulty courts had in deciding whether to classify radio broadcasts as libel or slander,[4] or the rigidity and technicality of many aspects of the law of defamation. Much of the law is obscure and confusing. Lawyers and judges are confronted with a maze of precedents. Litigation has become unduly long and expensive.[5] More importantly, writers, speakers and publishers are unsure of their legal position:[6]

> If defamation defies simplicity it nonetheless demands it. Defamation law is an inhibition of an important freedom, freedom of speech. Accepting that publication which affects reputation should be subject to legal sanction it is desirable that the limits of the restrictions imposed should be clearly stated. If people are unable to understand and apply the laws themselves one of two consequences may follow. Either they will publish material without legal justification, effecting private damage, or else, in fear and uncertainty, they will restrain themselves from the publication of material which might properly have been published and which the public is entitled to have.

The defects in the common law underline the importance of legislative reform. Unfortunately, our legislators have not been active in the modernization of the law of defamation. Legislative jurisdiction in this field is vested in the provincial legislatures under section 92 of the *Constitution Act, 1867*.[7] Most of the common law of defamation still remains untouched by legislation in this and other provinces. The British Columbia *Libel and Slander Act*[8] was not designed to codify the law, but to modify it in a few particulars. The majority of the provisions of the Act are in substance the same as the 19th century English legislation on which it is patterned.[9] Some of these borrowed rules are not appropriate for British Columbia. Thus for example, the privilege rules of section 4 ignore the federal character of Canada by failing to mention institutions of the federal government or other provinces. Nor does our Act reflect many of the 20th century changes to the legislation in

---

[2] *See, e.g.*, Linden, *Canadian Tort Law* (3rd Ed., 1981, Toronto: Butterworths) at 676; *Porter Report*, para. 19; *New Zealand Report*, paras. 1-15.

[3] Compare for example the present day attitudes toward rape and aristocracy to those expressed fifty years ago in *Youssoupoff* v. *M.G.M.*, (1934) 50 T.L.R. 581 (C.A.).

[4] *See Meldrum* v. *Australian Broadcasting Co., Ltd.*, [1932] V. L. R. 425 (Sup. Ct. Vict.).

[5] *See Faulks Report*, para. 20; *Unfair Publication*, para. 48.

[6] *Unfair Publication*, para. 49.

[7] 30 Vict., c. 3 (U.K.).

[8] *Supra*, note 1.

[9] *Newspaper Libel and Registration Act, 1881*, 44 & 45 Vict., c. 60 (Imp.); *Law of Libel Amendment Act, 1888*, 51 & 52 Vict. (Imp.), c. 64; *Slander of Women Act, 1891*, 54 & 55 Vict. (Imp.), c. 51.; these Acts influenced the *Law of Defamation Amendment Act*, R.S.B.C. 1897, c. 120, more than the statute it replaced, the *Defamation Act, 1891*, S.B.C. 1891, c. 19.

England.[10] Since 1897 there have been few changes of substance in our Act, the most important being those relating to broadcasting and slander of women.[11]

Our Report recommends many legislative changes. We also recommend that these should be incorporated in a new *Defamation Act* that would replace the *Libel and Slander Act*. Our draft *Defamation Act* is set out in Appendix A.

In formulating our proposals we have attempted to meet the needs of modernization, clarification and simplification, while maintaining an acceptable balance between the fundamental values of the law of defamation. As explained in Chapter II of this Report, we have not attempted a review of all aspects of the law of defamation. The reforms we suggest are meant to be a beginning in the process of reform, not the culmination.

Now is a particularly appropriate time to re-evaluate the law of defamation and its manner of balancing the interests of reputation and freedom of speech. Many proposals to reform the law have been made in Canada and in other countries. The world is engulfed in an information explosion, fueled by technologies unknown to previous generations, and obsolete to future generations. The law of defamation has now acquired a constitutional dimension. Section 2 of the Canadian Charter of Rights and Freedoms provides:

> 2. Everyone has the following fundamental freedoms:
>   (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

By virtue of section 52 of the *Constitution Act, 1982*, these freedoms are now part of the "supreme law" of Canada, and any law that is inconsistent with these freedoms "is, to the extent of the inconsistency, of no force or effect." We have not attempted an exhaustive analysis of the impact on the law of defamation of this constitutional guarantee. We believe, however, that the reforms we propose in this Report will bring our law more into harmony with the Charter.

A major portion of the Committee's work, as reflected in this Report, was devoted to an examination of defences to defamation actions: absolute privilege, qualified privilege and fair comment. This emphasis is dictated in part by the legislation that formed the basis for our discussions, and in part by the nature of the law of defamation. The law determining what the plaintiff must allege and prove to establish a cause of action is relatively simple: in a libel action the plaintiff has to establish three basic elements:

(i) publication
(ii) of defamatory matter
(iii) concerning the plaintiff.

Publication merely requires proof that the defendant communicated the matter to at least one person other than the plaintiff. A matter is defamatory if it tends to lower the plaintiff in the estimation of ordinary people. In a slander action, with three exceptions,[12] the plaintiff must prove, in addition to the three elements mentioned above, special damages. The defendant who wishes to escape liability must plead and prove some defence. Even the truth of the defamatory statement is a matter of defence. A true statement is not defamatory in the law of torts, but the defendant has the burden of proving truth

---

[10]. *See* the *Defamation Act, 1952*, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66.

[11] The *Libel and Slander (Amendment) Act*, S.B.C. 1969, c. 16, made broadcasting libel, and made amendments of substance that are now incorporated in ss. 6, 8 and 12. The statutory rule making imputations of unchastity against women actionable *per se* was repealed by the *Status of Men and Women Amendment Act*, S.B.C. 1975, c. 73, s. 11. The most recent amendment, the *Law Reform Amendment Act*, S.B.C. 1985, c. 10, s. 9, modernizes the definition of "broadcasting". All other amendments since 1897 have been minor, technical changes.

[12] The distinction between libel and slander is discussed in Chapter V.

(justification, as the defence is known). Furthermore, liability in defamation is "strict." As a general rule the defendant may be held liable (although the damages may be mitigated) even though he did not

(i) intend to defame,
(ii) understand the words in a defamatory sense,
(iii) intend to refer to the plaintiff,
(iv) know of the plaintiff's existence, or
(v) [where an innuendo is pleaded] know the extrinsic facts that made the words defamatory of the plaintiff.[13]

The difficult issues in defamation actions and in the law of defamation usually relate, therefore, to the defences rather than to the elements of the plaintiff's cause of action.[14] If changes are to be made in the law of defamation, particularly in adjusting the balance between freedom of speech and protection of reputation, the most convenient and logical vehicle for change is in the law governing the defences. This emphasis in the law on the defences is explained in the following passage from the dissenting judgment of Dickson J. in *Cherneskey* v. *Armadale Publishers Ltd.*:[15]

> The law of defamation must strike a fair balance between the protection of reputation and the protection of free speech, for it asserts that a statement is not actionable, in spite of the fact that it is defamatory, if it constitutes the truth, or is privileged, or is fair comment on a matter of public interest, expressed without malice by the publisher. These defences are of crucial importance in the law of defamation because of the low level of the threshold which a statement must pass in order to be defamatory. . . . In all cases, nevertheless the statement is not actionable if it is the truth, or fair comment, or protected by privilege. This is the reason why most defamation actions centre on the defences of justification, fair comment, or privilege. It is these defences which give substance to the principle of freedom of speech.

---

[13] *See, e.g.*, the notorious case of *Cassidy* v. *Daily Mirror Newspapers*, [1929] 2 K.B. 331 (C.A.). For less extreme example of unintended defamation of the plaintiff see *Harvey* v. *Horizon Publications Ltd.*, (1975) 61 D.L.R. (3d) 570 (B.C.S.C.).

[14] Subject to what is said later about the distinction between libel and slander, *infra*, Chapter V.

[15] (1978) 90 D.L.R. (3d) 321 at 342-343 (S.C.C.).

CHAPTER V

THE DISTINCTION BETWEEN LIBEL AND SLANDER

A. The Present Law

> A layman, with the narrow outlook of a layman on these affairs, might rashly suppose that it is eqally injurious to say at a public meeting 'Mr. Chicken is a toad', and to write upon a postcard, 'Mr. Chicken is a toad'. But the unselfish labours of generations of British jurists have discovered between the two some profound and curious distinctions. For example, in order to succeed in an action for slander the injured party must prove that he has suffered some actual and special damage, whereas the victim of a written defamation need not; so that we have this curious result, that in practice it is safer to insult a man at a public meeting than to insult him on a postcard, and that which is written in the corner of a letter is in law more deadly than that which is shouted from the house-tops.

A. P. Herbert wrote these words in jest,[16] but they accurately state the law of England and of British Columbia.

The law of defamation consists of two separate torts: libel and slander. Though the distinction has been maintained by the common law for centuries, it is still not clear how the distinction is to be drawn.[17] Defamatory material in writing or some other "permanent" form is indisputably libel. Slander is usually described as defamatory matter conveyed by the spoken word or in some other transitory form. Though satisfactory for most purposes, these definitions do not solve all problems. For example, is it libel or slander where the defendant reads from a script,[18] or plays a defamatory recording? In British Columbia the Legislature responded to the uncertainties regarding modern means of communication by introducing[19] what is now section 2 of the *Libel and Slander Act*: "Defamatory words in a broadcast are deemed to be published and to constitute libel." Unfortunately, as the Law Reform Commission of British Columbia demonstrated in its *Report on Cable Television and Defamation*,[20] the definition of "broadcasting" in section 1 of the Act was not satisfactory, especially in that it was not broad enough to include cable transmissions of television or radio signals. These problems were remedied in a 1985 amendment to the Act.[21]

The important legal consequence of the distinction is that libel is actionable *per se*. Except in three categories of cases, slander is not actionable *per se*; the plaintiff must allege and prove "special damages", that is, some temporal or material loss.[22] The three[23] exceptional categories of slander actionable *per se* are (i) words imputing to the plaintiff a loathsome, contagious disease; (ii) words imputing a crime punishable by imprisonment;[24] and (iii) defamatory statements regarding the plaintiff's fitness for, or conduct in, his profession, calling, trade or business. These common law categories are closed, and have generally been narrowly interpreted, except for the third category which has been applied flexibly in Canada.[25]

---

[16] "*Chicken* v. *Ham*, *The Lawyer's Dream*" in, Herbert, *The Uncommon Law* 71, at 73 (1955).

[17] On these difficulties *see Gatley*, para. 141, footnote 1, and para. 142; *Faulks Report*, para. 76.

[18] *See Forrester* v. *Tyrrell*, (1893) 9 T.L.R. 257 (C.A.); and *Meldrum* v. *Australian Broadcasting Co. Ltd.*, [1932] A.L.R. 432 (S.C. Vict.).

[19] Supra, n. 11, ss. 1 and 2.

[20] Law Reform Commission of British Columbia, *Report on Cable Television and Defamation* (LRC 50, 1981).

[21] *Supra*, note 11. The definition of broadcasting is discussed, *infra*, Chapter VI.

[22] *See Gatley*, paras. 203-216 for a discussion of what constitutes special damages.

[23] A fourth category, allegations of unchastity against women was added by statute, *Law of Defamation Amendment Act*, R.S.B.C. 1897, c. 120, s. 5, based on the *Slander of Women Act, 1891*, 54 & 55 Vict., c. 51, s.1 (Imp.), but this exception was removed from our *Libel and Slander Act* by the repeal of s. 5 in the *Status of Men and Women Amendment Act*, S.B.C. 1975, c. 73, s. 11

[24] *See, e.g., Conyd* v. *Brekelmans*, (1971) 18 D.L.R. (3d) 366 (B.C.S.C.), where it was held that the exception did not apply, because the defendant merely alleged an intention to commit a crime.

[25] *See, e.g., Lawson* v. *Thompson*, (1969) 5 D.L.R. (3d) 550 (B.C.C.A.).

B. The Committee's Conclusions and Recommendations

It is generally agreed that the distinction between libel and slander, and the rule that libel is actionable *per se* are accidents of history.[26] The retention of the distinction is no doubt due in part to the widely held view that a greater sting attaches to the written than to the spoken word. As Rand J. observed in *Ross* v. *Lamport*,[27]

> Apart from special cases, the consideration underlying oral defamation is that the language in the reasonable judgment of men could not but have a damaging effect on the person in the occupation he pursues; anything short of that would open the door to a flood of actions over mere "words" which experience shows, for the most part, to be evanescent in effect.

Whatever justification there may once have been for regarding libel, by reasons of its permanence, as more damaging to reputation than transitory slander, this is no longer so with modern technology. Nor does expanding the definition of libel by statute to encompass new technology solve all the problems of this archaic distinction. As the Faulks Committee observed:[28]

> It represents one of the few spheres (if not the only one) in which the forms of action continue to rule us from the grave. It renders this part of the law unreasonable and unnecessarily complicated and refined, carrying a host of rules and exceptions, derived partly from precedent and partly from statute, which are illogical, difficult to learn, and in certain applications, it must be added, unjust.

It is true that the present law prevents the bringing of vexatious actions for casual defamatory statements made in social settings. But this is a mere accidental benefit that does not justify retaining the existing law. The law also prevents the bringing of actions where the slander does great damage to reputation, and does nothing to prevent the bringing of vexatious libel actions where the damage to reputation is slight. The law permits the anomalous situation where the originator of the oral defamation may escape liability, while the one who repeats it in a written report may be held liable. The public good is furthered by the discouragement of actions for trivial attacks on reputation. But we believe there are more rational ways of accomplishing this than by distinguishing between modes of publication, without regard to the nature of the defamation or the effects of its publication.

The distinction between libel and slander has been criticized in many studies, but it remains the law in five provinces, and in England. Its abolition in England was proposed by a Select Committee of the House of Lords in 1843,[29] a recommendation repeated by the Faulks Committee in 1975.[30] In Canada the Uniform Law Conference first proposed the abolition of the the distinction in 1942, and this proposal was incorporated in the Uniform Defamation Act in 1944.[31] This has been adopted by statute in Alberta, Manitoba, New Brunswick, Newfoundland, The Northwest Territories, Prince Edward Island, and the Yukon.[32] The abolition of the distinction has been either accomplished or proposed in New Zealand,[33] and in most jurisdictions in Australia.[34] The Porter Committee is the only major study to have adopted a different view.[35] While recognizing that the common law was arbitrary and illogical, the majority took the view that abolishing the distinction would encourage frivolous, costly litigation for trivial defamatory remarks. The Faulks Committee[36] noted that the Porter Committee presented no evidence to support this view, and concluded[37] that the fear of opening the floodgates to petty actions was unfounded. There is no evidence that jurisdictions that have abolished the distinction have experienced any such flood.[38]

---

[26] *Faulks Report*, paras. 78 and 86: the history of the distinction is summarized, *id.*, Appendix VI.

[27] (1956) 2 D.L.R.(2d) 225 at 232 (S.C.C.).

[28] *Faulks Report*, para. 86.

[29] *See Faulks Report*, para. 80.

[30] *Faulks Report*, Chapter 2, especially para. 91.

[31] The history of the *Uniform Act* is summarized in the *Saskatchewan Report*, Annex A.

[32] *See Saskatchewan Report*, Annex B. Newfoundland abolished the distinction in 1983: *Defamation Act*, S.N. 1983, c. 63.

[33] The distinction was abolished in New Zealand by the *Defamation Act, 1954*, s. 4.

[34] For a review of the Australian studies and laws see *Unfair Publication*, paras. 75 and 76.

[35] *Porter Report*, paras. 36-41.

We believe that the distinction between libel and slander should be abolished in British Columbia. In so recommending, we do not believe we are encouraging the bringing of frivolous, vexatious actions for trivial defamatory remarks. There are many forces other than the law which discourage such actions: common sense, fear of embarrassment, inconvenience and expense. In the rare case where these are not sufficient to deter such actions, courts can demonstrate their disapproval and so deter others in the future by awarding nominal damages without costs, or even by awarding costs to the defendant.

We recommend, therefore, that the distinction between libel and slander should be abolished, and that henceforth there should be only one cause of action, known as the tort of defamation. We recommend that this change in the law should be effected by:

(i) changing the name of the *Libel and Slander Act* to the *Defamation Act*;
(ii) substituting the word "defamation" for all statutory references to "libel" or "slander;"
(iii) repealing section 2 of the present Act;
(iv) inserting into the interpretation section of the new Act, the following definition identical to section 1(b) of the Uniform Defamation Act:
"defamation" means libel or slander;
(v) enacting the following section identical to section 2 of the Uniform Defamation Act:
2. An action lies for defamation and in an action for defamation where defamation is proved, damages shall be presumed.

---

[36] *Faulks Report*, para. 85.

[37] *Ibid.*, at paras. 87-90.

[38] *See Faulks Report*, para. 90 summarizing evidence of the satisfactory results of abolition in New South Wales and New Zealand. *See New Zealand Report*, para. 71, noting that the abolition of the distinction "has not produced any problems since its enactment in 1954." No problems arising out of the abolition of the distinction in Canada have come to our attention.

CHAPTER VI

DEFINITIONS

Section 1 of the *Libel and Slander Act* defines the following terms: "broadcasting", "public meeting", and "public newspaper or other periodical publication."

The phrase "public meeting" is used only in section 4, which grants a privilege to certain reports, including reports "of the proceedings of a public meeting". Although we later recommend very substantial changes to section 4,[39] our recommendations include the retention of this category, and hence the need will remain to define "public meeting." Although the present definition is not a model of clarity, it has been with us for a long time, and is substantially the same as the definition used in other jurisdictions.[40] We know of no problems caused by this definition, and, therefore, we believe that it should be retained.

We recommend no change in the definition of "public meeting."

Our recommendation to abolish the distinction between libel and slander[41] removes the need to define "broadcasting" for the purpose of the rule in section 2 of the present Act that words in a broadcast "are deemed. . . to constitute libel." That, however, is not the only reference to broadcasting in the Act and, therefore, a definition will still be required for the purposes of those other provisions.

Several provisions of the *Libel and Slander Act*, namely, sections 3, 4, 5, 6, 7, 8, 11, 12, 18, 19 and 20 apply only to a "public newspaper or other periodical publication", or a "broadcast." These provisions and many of the recommendations we make in this Report recognize the special status and importance of these media of communication in the law of defamation. Sections 3 and 4, for example, grant to these publishers statutory privileges not available to other defendants. These privileges are discussed in Chapter VIII. Sections 6, 7, and 11 provide for mitigation of damages in actions brought against such defendants.

The definitions of "public newspaper or other periodical publication", and "broadcast" must be framed with a view to determining the scope of the protection provided to the media by these sections, and by several sections in the new *Defamation Act* that we propose in this Report.

The defects in the original definitions of "broadcasting", "radio" and "radio communication" were discussed in the Commission's *Report on Cable Television and Defamation*.[42] These defects have been removed by the new definitions enacted in 1985:[43]

> "broadcasting" means the dissemination of writing, signs, signals, pictures, sounds or intelligence of any nature intended for direct reception by, or which is available on subscription to, the general public
>
> (a) by means of a device utilizing electromagnetic waves of frequencies lower than 3,000 GHz propagated in space without artificial guide, or
>
> (b) through a community antenna television system operated by a person licensed under the *Broadcasting Act* (Canada) to carry on a broadcasting receiving undertaking;
>
> and "broadcast" has a corresponding meaning.

We recommend, therefore, that the new definitions of "broadcasting" and "broadcast" in the *Libel and Slander Act* should be retained, and incorporated in the new *Defamation Act* that we propose.

---

[39] Chapter VIII, heading D. 4.

[40] *See, e.g., Uniform Defamation Act*, s. 1; *Gatley*, para. 666.

[41] *Supra*, Chapter V.

[42] *Supra*, note 20.

[43] *Supra*, note 11.

We believe that the definition of "public newspaper or other periodical publication" should be re-examined to determine, for example, whether the 31 day period mentioned therein is adequate.[44] We have, however, refrained from making any recommendations on this definition, as we believe that opinions of the media should first be solicited.

We recommend further study of the definition of "public newspaper or other periodical publication", that the media and other interested parties should be invited to make representations on the matter, and that in the meantime the existing definition should be incorporated in the new Act.

Several provisions in our proposed Act and in the present Act apply to newspapers, periodicals and broadcasts. When this is so, the present act refers to libels in "a newspaper or other periodical publication or in a broadcast." To avoid the repetition of this cumbersome phrase in our proposed new Act we have adopted the phrase "public media."

We recommend, therefore, that the following new definition should be included in the proposed new *Defamation Act*:

> "public media" means a newspaper or other periodical publication or a broadcast.

We also considered the possibility of a statutory definition of defamation, as other recent studies have proposed.[45] In our view the case for a statutory definition has not been made out. We find problems in most of the suggested definitions, and we believe that in this respect the common law has operated reasonably well. As Dickson J., dissenting on other grounds, pointed out in *Cherneskey* v. *Armadale Publishers Ltd*:[46]

> The virtually universally accepted test is that expressed by Lord Atkin . . . in *Sim* v. *Stretch* (1936), 52 T.L.R. 669 at p. 671. He stated that the test of whether a statement is defamatory is: "Would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally?"

Provided the phrase "right-thinking members of society" is understood to mean "ordinary" or "reasonable" people, as seems to be the case in Canada,[47] we believe this and similar tests[48] used by the courts produce reasonably predictable results without being inflexible.

We do not recommend a statutory definition of "defamation" other than that proposed in the previous chapter to accomplish the abolition of the distinction between libel and slander.

---

[44] *See, e.g.*, the recommendation in the *Porter Report*, paras. 99-103, to extend the period to 36 days.

[45] *See, e.g.*, *Saskatchewan Report* at 96-99; *Unfair Publication*, paras. 77-84; *Faulks Report*, paras. 63-66.

[46] *Supra*, n. 15, at 342-43, Spence and Estey JJ., concurring. The test and the alternative test of words that tend "to expose him to hatred, contempt or ridicule" were also adopted by Ritchie J., Laskin C.J.C., Pigeon and Pratt JJ., concurring, *id.*, at 329-30.

[47] *See, e.g.*, *Murphy* v. *LaMarsh*, (1970) 73 W.W.R. 114 at 119 *per* Wilson C.J.S.C. (B.C.S.C.); *aff'd* [1971] 2 W.W.R. 196 (B.C.C.A.); leave to appeal refused: [1971] S.C.R. ix.

[48] *See, e.g.*, *Vander Zalm* v. *Times Publishers et al.*, (1980) 109 D.L.R.(3d) 531 at 535 *per* Nemetz C.J.B.C., 539-40 *per* Seaton J.A., and at 542 *per* Hinkson J.A. (B.C.C.A.); *Youssoupoff*, *supra*, n. 3, at 583-84 *per* Scrutton L.J. (C.A.).

CHAPTER VII THE RANGE OF PLAINTIFFS

A. Corporate Plaintiffs

Corporations are entitled to bring defamation actions. Actions may be brought by trading or business corporations, and by non-trading corporations, such as trade unions,[49] professional organizations,[50] and municipalities.[51] The nature of the corporation will determine the type of reputation it may acquire, and the manner in which it may be defamed. Thus a business corporation obviously could not sue for imputations of ill-manners, or sexual immorality.[52] It is similarly limited in the type of damages it can recover.[53]

The right of the corporate plaintiff to sue has been subject to considerable criticism lately as an unnecessary restriction on freedom of speech.[54] The Faulks Committee recommended restrictions on the right of corporations to sue for defamation.[55] We were unable to reach a consensus on this issue. Since it has not been demonstrated that serious problems have arisen in this country under the existing law, we, like the Saskatchewan Commissioners,[56] decided not to recommend any changes in the law.

We do not recommend any changes in the law governing the right of corporations to sue in defamation.

B. Class Actions and Group Defamation

The Committee considered group defamation, hate literature and class actions. We have not, however, made any recommendations on these issues. Changes in the law on these issues would likely involve fundamental alterations to the nature or scope of the tort of defamation that are beyond the scope of this Committee's mandate. Hate literature and related issues were considered in the recent study of the activities of the Ku Klux Klan in this province, the "McAlpine Report."[57] That Report was followed by the enactment of the *Civil Rights Protection Act*,[58] which, among other things, establishes a statutory tort to deal with problems of promoting hatred. Criminal aspects of the topic are dealt with in the *Criminal Code*.[59]

We make no recommendations regarding class actions, hate literature or group defamation.

---

[49] *See*, *e.g.*, *Pulp and Paper Workers of Canada* v. *International Brotherhood of Pulp, Sulphite and Paper Mill Workers*, [1973] 4 W.W.R. 160 (B.C.S.C.).

[50] *See*, *e.g.*, *Saskatchewan College of Physicians and Surgeons* v. *Co-operative Commonwealth Federation Publishing and Printing Co.*, (1965) 51 D.L.R. (2d) 442 (Sask. Q.B.).

[51] *See*, *e.g.*, *City of Prince George* v. *B. C. Television System Ltd.*, (1979) 95 D.L.R. (3d) 577 (B.C.C.A.).

[52] *See Gatley*, para. 955.

[53] *Ibid.*, at 960.

[54] *See*, *e.g.*, McLaren, "The Defamation Action and Municipal Politics," (1980) 29 U.N.B. L.J. 123; Weir, "Case Comment — *Local Authority* v. *Critical Ratepayer* — A Suit in Defamation," [1972] Camb. L.J. 238. *See* the discussion of the issue in the *Saskatchewan Report* at 104-105.

[55] *Faulks Report*, paras. 329-342.

[56] *Saskatchewan Report* at 105: "The *Uniform Defamation Act* should not codify, that is not make special provision in respect of, the rights of non-natural persons and bodies to sue in defamation."

[57] John D. McAlpine, *Report Arising out of the Activities of the Ku Klux Klan in British Columbia* (1981).

[58] S.B.C. 1981, c. 12.

[59] R.S.C. 1970, c. C-34, ss. 281.1, 281.2, 281.3, introduced by R.S.C. 1970, c. 11 (1st Supp.), s. 1.

CHAPTER VIII

THE PRIVILEGES ATTACHING TO REPORTS

A. Introduction

1. THE DISTINCTION BETWEEN ABSOLUTE AND QUALIFIED PRIVILEGE

There are numerous situations where a person is privileged to publish untrue defamatory statements without incurring liability in defamation. No single test exists to determine whether an occasion is privileged, and the categories of privilege are not closed. The fundamental principle is that a privilege is recognized by the law, not for the benefit of the person making the defamatory statement, but for the general benefit and convenience of society. Public policy on such occasions dictates that freedom of communication and expression take precedence over the protection of individual reputation.

The law distinguishes between two types of privilege: "qualified" and "absolute." These technical terms have been the source of some confusion, because they relate to only one distinguishing feature, namely, whether the privilege will be destroyed by proof of "malice." Where the privilege is absolute the defendant is immune from liability, however malicious his motives may have been. Such a drastic limitation on the law's protection of individual reputation is reserved for occasions of great public importance where the necessity to encourage frank discussion and disclosure without the inhibiting fear of liability overrides the need to protect reputation. At common law absolute privilege applied to statements made in judicial and quasi-judicial proceedings, in documents used in those proceedings, statements made in legislative proceedings, statements made by one officer of state to another in the course of his official duty, and possibly to certain communications between lawyer and client.[60] Absolute privilege has also been extended to a few situations by statute, two of which will be discussed below.[61]

On the other hand, the defence of qualified privilege is destroyed by proof that the publication was actuated by malice. As will be explained later,[62] malice will also destroy the defence of fair comment.

It is beyond the scope of this Report to examine the many occasions that may be protected by the defence of qualified privilege. For the most part this topic is governed by the common law. The broadest category of qualified privilege at common law encompasses statements made in the fulfillment of some duty (legal, moral or social), or in the protection of some interest, to a person or persons with a corresponding interest or duty to receive the statement. For example, if a prospective employer of the plaintiff asks a former employer for a reference the former employer's reply will be an occasion protected by qualified privilege, because it is made in discharge of a legitimate social duty to a person with a legitimate interest in receiving the information.

Another category of qualified privilege, and one that is of particular relevance to this Report, because it is the only type of privilege dealt with in our Act, is the privilege that attaches to certain reports that are in the public interest. This is discussed in detail under subsequent headings.

---

[60] For a detailed discussion of the common law categories *see Gatley*, paras. 383 to 425 and 431 to 433. It has also been suggested that communications between husband and wife are protected by absolute privilege: *see*, *e.g.*, Fleming, *The Law of Torts* (6th ed., 1983) at 533, but this has been doubted: *see Gately*, para. 248.

[61] 67(3) of the *Constitution Act*, R.S.B.C. 1979, c. 62, and s. 3 of the *Libel and Slander Act*, R.S.B.C. 1979, c. 234.

[62] Chapter IX, heading D.

2. THE MEANING OF MALICE

The burden of proving the malice that will destroy the defence of qualified privilege or fair comment is on the plaintiff.[63]

What is in issue here is what is sometimes called "express malice" to distinguish it from "malice in law," the latter being a concept derived from old pleading practices, and serving no purpose except to confuse, as indicated (no doubt unintentionally) in this laborious explanation of malice and qualified privilege:[64]

> The principle upon which the law of qualified privilege rests is, I think this: that where words are published which are both false and defamatory the law presumes malice on the part of the person who publishes them [malice in law]. The publication may, however, take place under circumstances which create a qualified privilege. If so,the presumption of malice is rebutted by the privilege, and . . . the plaintiff has to prove express malice on the part of the person responsible for the publication. . . . Qualified privilege is a defence only to the extent that it throws on the plaintiff the burden of proving express malice. Directly the plaintiff succeeds in doing this the defence vanishes, and it becomes immaterial that the publication was on a privileged occasion.

In order to defeat a defence of qualified privilege or fair comment the plaintiff has the burden of proving that the publication complained of was actuated by malice, meaning not merely spite or ill will, but any improper motive. What is improper in the context of the defence of qualified privilege will depend upon the purpose for which the law grants the privilege in question:[65]

> Under the present law a plea of qualified privilege will be defeated if the plaintiff can establish that the defendant was actuated by malice in making the publication complained of. The essence of malice in this context is that the defendant took improper advantage of the occasion which gave rise to the qualified privilege by making statements which he did not believe to be true, or for the purpose of venting his spite or ill-will towards the plaintiff, or for some other indirect or improper motive.

Similarly, the malice that will defeat a defence of fair momment is a motive other than the desire to present one's views on a matter of public interest.

Knowledge on the part of the defendant of the untruth of a statement or a reckless indifference whether it is true or false will almost always be conclusive of malice, because a deliberate lie is inconsistent with the purpose of the defence.[66] A qualification to this rule where the defence of fair comment is raised by a republisher of another's opinion is proposed below.[67]

3. THE PRIVILEGES ATTACHING TO REPORTS

> The law recognizes that the public has an interest in receiving fair and accurate reports of certain proceedings, such as those in courts and Parliament, notwithstanding that the proceedings may have contained statements defamatory of individuals. The common law protects some such reports, so long as they are made honestly and for the purpose of giving information to the public; there is thus a qualified privilege for such reports. The categories of reports so protected are not closed, though the courts are slow to add to them.[68]

To explain the significance of the privilege, absolute or qualified, that attaches to some reports several points must be emphasized. Outside of situations protected by privilege, it is no defence in a defamation action to establish that the defendant was merely repeating or reporting what another person said.[69] Each publication is a separate libel or slander.[70] The defence of truth or justification is not made out by proving the accuracy of the report of what was said by another; what must be proved is the accuracy of what that other said.

---

[63] *See Gatley*, paras. 790-798.

[64] *Smith* v. *Streatfield*, [1913] 3 K.B. 764 at 769-70, *per* Bankes J.

[65] *Faulks Report*, para. 239; *see also Clark* v. *Molyneux*, (1877) 3 Q.B. 237, at 246 *per* Brett L.J.

[66] *See Horrocks* v. *Lowe*, [1975] A.C. 135 at 149-153 *per* Lord Diplock, Lords Wilberforce, Hodson, and Kilbrandon, concurring, for a detailed discussion of this and other aspects of the meaning of malice.

[67] Chapter IX, heading G.

[68] *Gatley*, para. 591. For a discussion of the common law privileges attaching to reports of non-judicial and non-legislative proceedings. There is very little binding authority on this issue: *see Gatley*, paras. 639-648.

Frequently one who reports the statements of another will not be able to determine the accuracy of that statement, or may be able to do so only after considerable effort, expense and delay. Unless protected by privilege, the reporter is faced with the unenviable choice of publishing with a risk of liability for defamation, refraining from publishing, or delaying the publication until the matter has been thoroughly investigated. Whether these obstacles to publication should be tolerated or removed by the protection of absolute or qualified privilege will depend on several factors, the most significant of which are the importance of the occasion and the need for prompt dissemination of the matter involved. Risking private reputation in a report of what was said in court or in a legislature will be much easier to justify, for example, than risking that same reputation in a report of what was said in a cocktail conversation. The status of the publisher of the report will also have an important bearing on the issue, as demonstrated in the special provisions of the *Libel and Slander Act* concerning reports in newspapers and broadcasts.[71] The manner and breadth of the publication of the report should also be considered in assessing the validity of a claim of privilege.

For the purposes of the law of privilege the status of the report is independent of the status of the occasion reported on. Thus, for example, a member of Parliament is protected by absolute privilege for anything he says in proceedings in Parliament, but one who reports what is said in Parliament is at best only protected by qualified privilege, and if he does not fall within the scope of that defence he will be held liable in defamation for repeating any defamatory remarks made in Parliament, unless he can establish another defence, such as truth.[72] By way of contrast, a report may be protected by qualified privilege under section 4 of the *Libel and Slander Act* while the statement reported is not.[73]

B. Section 3 of the *Libel and Slander Act*

1. THE NATURE AND SCOPE OF THE DEFENCE

Section 3 of the *Libel and Slander Act* provides:

> **3.** (1) A fair and accurate report in a public newspaper or other periodical publication or in a broadcast of proceedings publicly heard before a court exercising judicial authority if published contemporaneously with the proceedings, is privileged.
>
> (2) This section does not authorize the publication of blasphemous or indecent matter.

The section is based on section 3 of the *Law of Libel Amendment Act, 1888*, (U.K.)[74] and, except for the reference to periodicals and broadcasting,[75] it is, in substance, identical to that provision.

---

[69] *See, e.g., Douglas v. Tucker*, [1952] 1 S.C.R. 275.

[70] *See Gatley*, para. 261, and the authorities cited therein.

[71] *See* Chapter VI, *supra*, and the remaining headings of this Chapter.

[72] *See, infra*, heading C.

[73] *Cf. Faulks Report*, para. 228.

[74] 51 & 52 Vict., c. 64.

[75] The 1888 Act provision applied to periodicals published at no more than 26 day intervals by virtue of the definition of "newspaper" incorporated into the Act by s. 1 of that Act; the definition was broadened to include periodicals published at 36 day intervals by the *Defamation Act, 1952* (U.K.), 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66, s. 7(5). The section was also extended to broadcasters by s. 9 of the *Defamation Act, 1952*.

At common law, fair and accurate reports of judicial proceedings were protected by qualified privilege.[76]

The privilege under section 3, according to the majority view,[77] is not destroyed by proof of malice on the part of the defendant. It is, therefore, an "absolute privilege", according to the technical terminology explained under the previous heading.

Although "absolute", the statutory privilege is nevertheless circumscribed by several restrictions. Like the common law privilege, section 3 only applies to reports that are fair and accurate. This does not mean that the report must be a complete, verbatim report, which would be a practical impossibility in most instances. A summary of proceedings is adequate, so long as it is substantially accurate (by journalistic and not by legalistic standards), balanced, unbiased, confined to what occurred during the proceedings in open court, and not embellished with extraneous comment. Trials that last several days may be reported as the case progresses, even though a complete and balanced picture will not emerge until the conclusion of the trial.[78]

Unlike the common law qualified privilege, which applies to all types of publishers,[79] the privilege of section 3 applies only to reports in "a public newspaper or other periodical publication or in a broadcast."

Furthermore, the statutory privilege, unlike the common law privilege, only applies to reports that are published "contemporaneously with the proceedings."[80]

2. THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

The Committee concluded that the need for substantial change in s. 3(1) of the *Libel and Slander Act* has not been established.[81] At the same time we wish to emphasize, as explained in Chapter II, the limited nature of this study. No empirical research has been undertaken on the operation of section 3 to determine, for example, whether it has been abused by the media. Nor have we attempted to solicit the views of the media or other informed and interested parties.

We agree with the view that the privilege under section 3 is absolute, in the sense that it is not destroyed by malice. In our view this conclusion is dictated by the contrast between the wording of sections 3 and 4, and by the fact that, if the section 3 privilege is not absolute, it accomplishes nothing, since a broader qualified privilege for reports of judicial proceedings exists by virtue of the common law.[82]

We are also of the view that the public importance of encouraging fair and accurate reports of proceedings in our courts dictates that the privilege should be retained in its absolute form. The risk, which in our view has not yet materialized, that this privilege might be exploited by unscrupulous members of the media to engage in personal vendettas against defamed persons is not grave enough to outweigh the advantages of the privilege. The scope for abusing the privilege, it must be remembered, is restricted not only be the self-restraint of the media, but by the statutory conditions that the report be fair, accurate, and contemporaneous. We do not, however, think it necessary to declare in the statute that the privilege is absolute, a change recommended by the Faulks Committee[83] and section 11 of the *Uniform Defamation Act*. We believe that such an amendment might lead to the erroneous conclusion that a change in the law was intended, and might produce confusion as to the meaning of "absolute."

---

[76] *See Gatley*, paras. 428, and 593-628 for a discussion of the common law.

[77] *See*, *e.g.*, *Gatley*, paras. 492 and 631; *Faulks Report*, paras. 189 and 190.

[78] This summary of the meaning of "fair and accurate" is based on *Gatley*, paras. 604-624. For a discussion of what constitutes a fair and accurate report *see Holt* v. *Sun Publishing Co.*, (1978) 83 D.L.R. (3d) 761 (B.C.S.C.).

[79] *See Gatley*, para. 594.

[80] On the meaning of "contemporaneously," *see Gatley*, para. 633.

[81] The *Porter Report*, para. 92 made only passing reference to the equivalent provision of s. 3 of the 1888 Act, and recommended that there be no extension of the categories of absolute privilege: para. 93. The only change recommended in the *Porter Report* that affected s. 3 was to extend the definition of "newspaper" to include periodicals published at intervals not exceeding 36 days; this change was recommended in its discussion of qualified privilege, paras. 99-103. Similarly no change was recommended in the *Faulks Report*, paras. 187-191, except the recommendation to declare the privilege absolute in the statute.

[82] These arguments are presented in the *Faulks Report*, para. 190, but it is also pointed out in para. 189, that the intent of Parliament was to make the privilege qualified, since the word "absolute" in the Bill was deliberately struck out in Committee.

Section 11(1) of the *Uniform Defamation Act* is substantially the same as section 3 of our Act, but section 11(2) of the Uniform Act states that the privilege does not apply where the defendant failed to publish at the request of the plaintiff a reasonable letter or statement of explanation or contradiction. We have considered and rejected the introduction of a similar right of reply in our Act. Most newspapers or broadcasters welcome the opportunity to voluntarily publish such replies, as they are generally "newsworthy," but we do not think it wise to limit the freedom of the media in relation to reports of judicial proceedings by forcing them to print a reply. A retrial of a case in the public media while court proceedings are in progress might constitute contempt of court. As we explain below,[84] there are occasions were a right of reply is a proper limitation on a privilege, but section 3, in our view, is not one of them.

In keeping with the general principle that absolute privilege should be confined to situations where the need is clear, we recommend that the Act should be amended to restrict the application of section 3 to reports of "proceedings publicly heard before a *Canadian* court exercising judicial authority." The addition of the italicized word would make explicit what may be implicit in the existing section. The limitation to domestic courts would be consistent with an amendment introduced in 1952 in the United Kingdom, which restricted their equivalent privilege to "courts exercising judicial authority within the United Kingdom."[85] Reports of court proceedings in specified countries outside of Canada will be protected by qualified privilege under provisions of the new Act that we propose below.[86] Reports of other foreign judicial proceedings will be protected by the common law qualified privilege when there is a legitimate Canadian interest in such proceedings.[87]

We recommend, therefore, that there should be no change of substance in section 3(1), but that it should be re-enacted in the following form as section 5 of the new Act:

> 5. A fair and accurate report in the public media of proceedings publicly heard before a Canadian court exercising judicial authority if published contemporaneously with the proceedings, is privileged.

Subsection 3(2) is difficult to justify in its present form. It does not deal directly with the defence of qualified privilege. Nor does it actually prohibit publication of blasphemous or indecent matter; it merely states that the section does not authorize such publication. A prohibition or authorization of such publication would, in any event, probably be an invasion of Parliament's jurisdiction over criminal law under section 91(27) of the *Constitution Act*,

---

[83] *Faulks Report*, *supra*, para. 191.

[84] Chapter VIII, heading D. 3.

[85] *Defamation Act, 1952*, 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66, s. 8.

[86] Chapter VIII, heading D. 4.

[87] This was the approach adopted in England in *Webb* v. *Times Publishing Co.*, [1960] 2 Q. B. 535 by Pearson J. in a well reasoned judgment, and it is assumed that it represents the law in this country as well. It should be noted, however, that earlier authorities had assumed that qualified privilege attached to fair and accurate reports of all foreign judicial proceedings, without the limitations suggested in *Webb* v. *Times Publishing Co.*: *see Gatley*, para. 600, footnote 47.

1867, a jurisdiction that has been exercised in the *Criminal Code* in, for example, section 260 (blasphemous libel), and section 159 (publishing, selling, etc. obscene matter), and particularly section 162:

> **162.** (1) A proprietor, editor, master printer or publisher commits an offence who prints or publishes (a) in relation to any judicial proceedings any indecent matter or indecent medical, surgical or physiological details, being matter or details that,if published, are calculated to injure public morals.

It appears that section 3(2) was borrowed from the 1888 statute of the United Kingdom without any thought being given to its appropriateness in the Canadian context.[88] We recommend that the provision be replaced by a new section that acknowledges that the Act is not intended to authorize any matter prohibited by the criminal law.

We recommend, therefore, that subsection 3(2) should be repealed, and that the following provision should be enacted as section 24 of the new Act:

> **24.** Nothing in this Act authorizes the publication of any matter prohibited by the criminal law of Canada.

C. Reports of Parliamentary and Legislative Proceedings

1. THE EXISTING LAW

A fair and accurate report of proceedings in Parliament or a legislature enjoys qualified privilege at common law.[89]

This common law qualified privilege attaching to *reports* of legislative proceedings must be distinguished from the *absolute* privilege that attaches to certain legislative proceedings and publications.

What is said by a member in proceedings in Parliament or a legislature is absolutely privileged.[90] In British Columbia this privilege is preserved by section 67(2)(a) of the *Constitution Act*:[91] "An action at law or other civil proceedings shall not be brought against a member of the Legislative Assembly for (a) words spoken by him in the Legislative Assembly." On the federal level the privilege is preserved, without specific reference to it, by section 4 of the *Senate and House of Commons Act*,[92] which preserves the traditional privileges of members.

Section 67 of the *Constitution Act*[93] creates another category of absolute privilege:

> (3) An action at law or other civil proceeding shall not be brought against a member, or against any person, because of the printing or publication of documents or papers printed or published by order of the Legislative Assembly or the Speaker.

Section 7 of the *Senate and House of Commons Act* provides a similar protection for publications authorized by the Senate or House of Commons.

The Committee did not consider it necessary to re-examine these categories of absolute privilege that are well recognized in our traditions of parliamentary democracy. We have directed our attention instead to the issue of what privilege should attach to the reports in the public media of parliamentary proceedings.

---

[88] The equivalent of s. 3(2) is retained in the *Uniform Defamation Act*, s. 10(3), dealing with reports of proceedings in Parliament, legislatures, councils and boards, and in s. 11(1)(c) dealing with reports of judicial proceedings. The wording is different from ours in that it extends to seditious materials as well as blasphemous and indecent matter, and in that it more directly indicates that the privilege does not apply to such matter.

[89] *See Gatley*, para. 635; *Cook v. Alexander*, [1974] Q. B. 279 (C.A.).

[90] *See Gatley*, para. 422. The privilege is based on Article 9 of the *Bill of Rights 1688*, "That the freedom of speech, and debates on proceedings in Parliament ought not to be impeached or questioned in any court, or place out of Parliament." On the meaning of "proceedings in Parliament", *see Stopforth* v. *Goyer*, (1978) 87 D.L.R. (3d) 373 (Ont. H.C.) *rev'd*, (1979) 97 D.L.R. (3d) 369 (C.A.).

[91] R.S.B.C. 1979, c. 62.

[92] R.S.C. 1970, c. S-8.

[93] This provision originated in the *Parliamentary Papers Act, 1840*, (U.K.), passed in response to the decision in *Stockdale* v. *Hansard*, (1839) 9 Ad. & E. 1, 112 E.R. 1112 (Q.B.): *See Gatley*, para. 426 and accompanying footnotes.

2. THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

The Committee considered, but rejected, the suggestion that the absolute privilege attaching to reports of judicial proceedings under section 3 of the Act should be extended to reports of Parliamentary or legislative proceedings. The Faulks Committee reached a similar conclusion,[94] and it is in keeping with the fundamental principle that an absolute privilege should only be granted for the most compelling reasons. We are not aware of any such reasons. Although there are similarities between the reporting of judicial and legislative proceedings, we believe that there are grounds for distinguishing between the two types of reports. There are safeguards against improper attacks on reputation in judicial proceedings that are not present in legislative proceedings. The control over the proceedings exercised by an independent judge, the requirements of relevancy of evidence, the cross examination of witnesses, and the general adversary nature of the proceedings, limit the scope for attack on an individual's reputation, and provide a forum for a balanced counter attack when reputation is impeached.[95]

We recommend, however, that fair and accurate reports of proceedings in Parliament and legislatures should continue to enjoy qualified privilege. This should be put in statutory form, and extended to reports of parliamentary proceedings in certain other countries, through the new version of what is now section 4 of the *Libel and Slander Act*, discussed below.[96]

Live and delayed broadcasts of proceedings in Parliament and in legislatures in some other provinces are now permitted. Although no specific reference is made to these in the *Senate and House of Commons Act*,[97] section 7 may be broad enough to include such broadcasts within the words "the publication of any report, paper, votes or proceedings, . . . by or under the authority of the Senate or House of Commons." If this interpretation is correct, then such broadcasts are protected by absolute privilege. This legislation, of course, does not apply to broadcasts of proceedings in other legislative bodies in Canada. We do not believe that special provincial legislation is required to deal with such broadcasts of proceedings made under authority of Parliament or legislatures. Adequate protection for broadcasts that constitute fair and accurate reports of legislative proceedings will be available under the new version of section 4 that we propose under the next heading.

D. Reports Privileged under Section 4 of the *Libel and Slander Act*

1. THE NATURE AND SCOPE OF THE DEFENCE

Section 4 of the *Libel and Slander Act* provides:

> **4.** (1) A fair and accurate report published in a public newspaper or other periodical publication or in a broadcast of the proceedings of a public meeting, or, except where neither the public nor a news reporter is admitted, of a meeting of a municipal council, school board, board or local authority formed or constituted under any Act, or of a committee appointed by any of the above mentioned bodies, or of a meeting of commissioners authorized to act by letters patent, Act or other lawful warrant or authority, or select committees of the Legislative Assem-

---

[94] *Faulks Report*, para. 216, subject to qualifications regarding radio and television broadcasts, paras. 218-222.

[95] The Law Reform Commission of Australia in *Unfair Publication*, paras. 133 and 134, noted numerous complaints of abuse of privilege in Parliament, but found little criticism of abuse of the privilege in court, "possibly because of the control which judges exercise over unnecessary derogatory statements." (para. 134.)

[96] Chapter VIII, heading D. 4.

[97] R.S.C. 1970, c. S-8.

> bly, and the publication at the request of a government office or ministry, or a public officer, of a notice or report issued for the information of the public, is privileged, unless it is proved that the report or publication was published or made maliciously.
>
> (2) This section does not authorize the publication of blasphemous or indecent matter; and the protection intended to be afforded by this section is not available as a defence in proceedings if it is proved that the defendant has been requested to insert in the newspaper or other periodical publication, or to broadcast in the same manner as that, in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other publication and has refused or neglected to insert it.
>
> (3) This section does not limit or abridge a privilege now existing by law, or protect the publication of matter not of public concern and the publication of which is not for the public benefit.

The section is based on section 4 of the *Law of Libel Amendment Act, 1888* (U.K.). The only change of substance in the British Columbia provision, since 1897 when it was first introduced,[98] was the addition, in 1969, of the reference to broadcasts.[99] There are several similarities between sections 3 and 4:

They apply to reports of proceedings, but do not grant protection to the original publication, which may or may not be privileged under the general law.

The protection is conditional upon the reports being "fair and accurate."

The privileges are granted only to publications in "a public newspaper or other periodical publication or in a broadcast."

The sections do not authorize the publication of "blasphemous or indecent matter."

But there the similarities end. Section 4 differs from section 3 in the following respects:

It applies to reports of non-judicial proceedings.

It does not require the report to be contemporaneous.

The privilege applies not only to reports in the sense contemplated by section 3, but also to "the publication at the request of a government office or ministry, or a public officer, of a notice or report issued for the information of the public."

The privilege is qualified, because section 4(1) provides the publication "is privileged, unless it is proved that the report or publication was published or made"maliciously."

The section 4 privilege is subject to the right of reply stated in section 4(2).

Also, the protection, according to section 4(3), does not extend to "the publication of matter not of public concern and the publication of which is not for the public benefit."

The section is narrow in scope, especially when it is interpreted in the light of the definitions of "Act," "Legislative Assembly," and "minister" in the British Columbia *Interpretation Act*,[100] which have the effect of excluding reports of proceedings on the federal level and in other provinces.

The scope of the protection provided by s. 4 is wider than that provided by the common law. Outside the protection granted to reports of judicial and legislative proceedings, the common law is uncertain and the courts have shown little willingness to expand the common law privilege.[101] It is especially important to bear in mind in evaluating the common law and the need for statutory changes that, as the Supreme Court of Canada has ruled on numerous occasions, no qualified privilege attaches to the media merely because the public has a legitimate interest in the matter published.[102]

---

[98] The original version of the B. C. provision, s. 10 of the *Defamation Act*, S.B.C. 1891, c. 19, only applied to reports of public meetings; this provision was replaced by R.S.B.C. 1897, c. 120, s. 4, a provision almost identical to the 1888 U.K. Act.

[99] S.B.C. 1969, c. 16, ss. 1 and 2.

[100] R.S.B.C. 1979, c. 206, ss. 1 and 29.

2. A RE-EXAMINATION OF THE SCOPE OF SECTION 4

Some of the reasons for granting special protection to reports are discussed in heading A. 3., above. The publisher of the report will usually not be as well placed as the original publisher to determine the accuracy of the matter. The risk of liability in defamation may, therefore, inhibit such reporting, or at least delay it pending confirmation of the accuracy of the story. This we believe is undesirable in instances where the public's interest in receiving information takes precedence over the individual's interest in preserving reputation. The rationale for granting a privilege covering reports is explained under the rubric "fair report" by The Law Reform Commission of Australia:[103]

> Basic to the defence of fair report is the republication rule, that is the rule that a person may be liable in defamation for simply repeating what someone else had said. . . . A republisher will often have little information as to the truth of a defamatory statement. Unless wide exceptions were made the rule would seriously restrict public information relating to public affairs. Consequently, the law, in an unmethodical and inconsistent way and responding to particular topical needs, has recognized circumstances where a defamatory statement may be reproduced with impunity. . . . They are of immense importance to the media, providing as they do a defence in many types of case for a fair and accurate report. They are of equal importance to the public. Without them much information which we expect to receive, and do receive, could not be reported.

The expansion of the privilege attaching to reports of public proceedings has wide support. The *Uniform Defamation Act*, section 10, proposes an expanded list of proceedings that has been adopted in some jurisdictions.[104] The 1982 *Saskatchewan Report* to the Uniform Law Conference stated that "section 10 is almost certainly too confined for modern needs," and suggested that consideration be given to proposals of other law reform bodies for the expansion of the list.[105]

An extensive list was proposed in the United Kingdom in 1948 by the Porter Committee with this explanation:[106]

> The list of reports entitled to privilege. . . [under the U.K. statute] reflects the matters which were of interest to the public at the close of the Nineteenth Century when the Law of Libel Amendment Act, 1888, was passed. It has been urged upon us on behalf of the Press that changes in social and administrative conditions since that date, and the increasing interest in foreign affairs, have rendered inadequate the categories of reports entitled to privilege, and that the time is now ripe for a considerable extension. . . .We agree with this suggestion.

The Porter Committee also recommended[107] that reports should be divided into two categories: those that are privileged without granting a right of reply to the defamed person, and those that are privileged only if a right of reply is given to the defamed person. With minor modifications these recommendations were implemented by the *Defamation Act, 1952*.[108] In 1975 the Faulks Committee recommended a further expansion of the privilege by adding significantly to the list of reports, and by extending the privilege to all publishers, not merely to newspapers and broadcasters as under the 1952 Act.[109] These recommendations have not yet been acted upon. A table comparing the lists of qualified reports in our *Libel and Slander Act*, the 1952 U.K. Act, the *Faulks Report* and the Uniform Act is presented in Appendix I. Expansion of the qualified privilege attaching to reports has also been recommended in Australia,[110] and New Zealand.[111]

---

[101] *See Gatley*, paras. 639-648.

[102] *See Douglas*, *supra*, n. 69; *The Globe and Mail Ltd.* v. *Boland*, [1960] S.C.R. 203; *cf. Jones* v. *Bennett*, [1969] S.C.R. 277.

[103] *Unfair Publication*, para. 150.

[104] *E.g.*, *The Defamation Act*, R.S.M. 1970, c. D-20, s. 10; *Defamation Act*, R.S.A. 1980, c. D-6, s. 10.

[105] At 122-123. By way of illustration, the *Report* in Annex D reproduced the recommendations of the 1979 Western Australian Law Reform Commission and the *Faulks Report*. At present Nova Scotia, *Defamation Act*, R.S.N.S. 1967, c. 72, s.12; and Ontario, *Libel and Slander Act*, R.S.O. 1980, c. 237, s. 3, have the most extensive statutory lists in Canada.

[106] *Porter Report*, paras. 106 and 107.

[107] *Ibid.*, paras. 107 - 111.

3. THE REPLY AS A CONDITION OFTHE SECTION 4 DEFENCE

Our law does not have the *droit de reponse* that exists in countries such as France and Germany.[112] Under the French Press Law,[113] for example, any person mentioned in the press, whether defamed or not, has a legally enforceable right to reply of equal prominence and length as the original story. The reply may not contain statements that are unlawful, against the public interest, or that violate the interests of third persons. A summary procedure is established for settlement of disputes in court, and a refusal to publish a proper reply is an offence.

Instead of providing the person allegedly defamed with a right of reply, our section 4 makes the availability of the statutory defence conditional upon the defendant having published, if the plaintiff so requested, "a reasonable letter or statement by way of contradiction or explanation." In other words, the defendant cannot be forced to publish a reply, but if he refuses to do so and is sued for defamation he cannot rely on section 4. Similar laws exist in other provinces and in the United Kingdom.[114] Providing the public with complete information and fairness to the person defamed provide the rationales for the rule. The public is entitled to both sides of a story, and if the person defamed is to be deprived by law of a right of action he should be afforded an opportunity to reply. "The media do not have to publish in the first place; if they choose to do so they should be prepared to make their facilities available to present both sides of the matter."[115]

We do not, however, believe that the defence of fair and accurate report should in all cases be conditional upon the defendant giving the plaintiff an opportunity to reply. The public interest in receiving a fair and accurate report may in certain cases outweigh the public's interest in receiving the reply of an individual defamed, or the individual's interest in making a reply. In such cases the media should not be deterred from publishing by being faced with the choice of either affording the individual an opportunity to reply, or foregoing the protection of section 4. The media, it must be remembered, will be the reporters, and not the originators of the defamation. The media should not be made to bear the burden of providing the individual with a free, public forum, to publish a reply that may or may not be accurate, newsworthy or in the public interest. The decision on whether to afford the individual an opportunity to reply or risk losing the defence of privilege will likely have to be made before there is an opportunity to investigate the merits of the individual's complaint.

---

[108] 15 & 16 Geo. 6 & 1 Eliz. 2, c. 66, ss. 7, 9 and 16, and the Schedule.

[109] *Faulks Report*, paras. 229 - 231, and Appendix XI.

[110] *See Unfair Publication*, paras. 150 - 164. *See also* the discussion and recommendations concerning a new defence of "fair report" of attributed statements (as opposed to reports of proceedings such as those listed in our Act or the U. K. Act), paras. 165-181.

[111] *New Zealand Report*, paras. 208-229.

[112] For a discussion of the *droit de reponse see Porter Report*, paras. 107-109; *Faulks Report*, paras. 618-626; *Unfair Publication*, paras. 178-180.

[113] *See Unfair Publication* at 95, footnote 138 for details.

[114] *E.g.*, *Libel and Slander Act*, R.S.S. 1978, c. L-14, s. 10(3); *Defamation Act*, R.S.N.S. 1967, c. 72, s. 12(6); *Libel and Slander Act*, R.S.O. 1980, c. 237, s. 3(7); *Defamation Act, 1952* (U.K.), s. 7(2); *see also* the *Uniform Defamation Act*, s. 10(4), s. 11(2) (court proceedings).

[115] *Unfair Publication*, para. 178.

The choice of when the defence should, and when it should not, be subject to giving the plaintiff an opportunity to reply is difficult to make. We believe that the guiding principle should be based on the importance of the matter reported on and the importance of the public's right to be informed. This means, we believe, that the reporting of important provincial, national and international institutions should in general be privileged without providing the plaintiff an opportunity to reply. Reports of proceedings in our courts and legislatures fall into this category. Reports of company meetings or school boards do not. Our specific recommendations on these and other types of reports are presented below.

4. THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

The widespread support for an expansion of the qualified privilege attaching to reports of public proceedings confirms our view that section 4 of the present Act is inadequate to the demands of a modern defamation law.

We are of the opinion that our law on this topic should be patterned on the United Kingdom *Defamation Act, 1952*, and the recommendations of the 1975 Faulks Committee.

We recommend, therefore, that section 4 should be repealed and replaced by the new provisions set out below. We propose that the reports of proceedings and the publication of other matters listed in section 6 should be protected by qualified privilege without right of reply, and that those listed in section 7 should be subject to a right of reply. The new section 8 will preserve the "public concern" and "public benefit" rules of section 4(3). For the reasons indicated under heading B.2. above, we have deleted the provision regarding blasphemous or indecent matter.

Proposed New Sections to Replace s. 4

Reports and statements privileged
without explanation or contradiction

6. Subject to section 8, the publication in the public media of any such report or other matter as is listed herein shall be privileged unless it is proved that the report or other matter was published or made maliciously:

- (a) A fair and accurate report of any proceedings in public of the Parliament of Canada, or the legislature of any Province or Territory, or of a committee of any of them, or of the Parliament at Westminster or the legislature of any other Commonwealth country or constituent legislative part thereof, or of the Congress of the United States of America or the legislature of any of its States or Territories.
- (b)
  - (i) A fair and accurate report of any proceedings in public of any international organization of which Canada or British Columbia is a member, or of any international conference to which the government of Canada or British Columbia sends a representative, or a public statement or report of any such organization.
  - (ii) A fair and accurate report of any proceedings of any international organization or agency carrying out functions under the United Nations Organization or a public statement or report of any such organization or agency.
- (c) A fair and accurate report of any proceedings in public of an international court.
- (d) A fair and accurate report of any proceedings in public before:
  - (i) a court exercising judicial functions in Canada in so far as such report is not contemporaneous with the proceedings reported;

(ii) a court exercising judicial functions in the United Kingdom or any other Commonwealth country or in the United States of America;

(iii) a Canadian court martial held within or outside Canada.

(e) A fair and accurate copy of, or extract from, any register kept in pursuance of any Act of Parliament or of the legislature of any province or territory which is open to inspection by the public, or of any other document which is required by an enactment of Canada or of any province or territory to be open to inspection by the public.

(f) A fair and accurate report of:

(i) a document published by order or under the authority of the Senate or House of Commons, the legislature of any province or territory, or the speaker thereof, or by the government of Canada or any province or territory;

(ii) a document published by or under the authority of the government or legislature of the United Kingdom or any other Commonwealth country or constituent legislative part thereof or of the United States of America or any state or territory thereof.

(g) A notice or advertisement published by or on the authority of any court in Canada.

(h) A notice or advertisement published in Canada by or on the authority of a duly constituted court in the United Kingdom or any other Commonwealth country or any foreign state which is recognized by Canada.

Reports and statements privileged
Subject to explanation or contradiction

7. (1) Subject to section 8, and subsection (2), the publication in the public media of any such report or other matter as is mentioned in subsection (3) shall be privileged unless it is proved that the report or other matter was published or made maliciously.

(2) A privilege created or confirmed by this section shall not be a defence to an action for defamation if it is proved that the defendant has been requested by the plaintiff to insert in the newspaper or other periodical publication, or to broadcast in the same manner as that in which the report or other matter complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other matter and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) This section applies to the following publications:

(a) A letter or statement by way of explanation or contradiction published in compliance with subsection (2).

(b) A fair and accurate report of the findings, or decision of any of the following associations, or of any committee or governing body thereof:

(i) an association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

(ii) an association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(iii) an association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;

(iv) an association formed in Canada for the purpose of promoting a charitable object or other objects beneficial to the community and empowered to exercise control over or to adjudicate on matters of interest or concern to the association or the actions or conduct of any person subject to such control or adjudication,

being a finding or decision relating to a person who is a member of or is subject by statute or common law or by virtue of any contract to the control of the association.

(c) A fair and accurate report of the proceedings of any public meeting held in Canada.

(d) A fair and accurate report of the proceedings at any meeting or sitting of:
  (i) any municipal council, school board or other local authority, or any committee thereof in any part of Canada;
  (ii) any commission, tribunal, committee or person appointed for the purpose of any inquiry by or under any Act of Parliament or of the legislature of any province or territory;
  (iii) any tribunal, board, committee or body constituted by or under, or exercising functions under, an Act of Parliament or of the legislature of any Province or Territory;

not being a meeting or sitting admission to which is denied to representatives of the public media and to other members of the public, and of any public statement, report, decision or other adjudication of any such body.

(e)
  (i) A fair and accurate report of the proceedings at a general meeting in Canada of any corporation or association constituted, registered or certified by or under any Act of Parliament or of the legislature of any Province or Territory, or incorporated by Royal Charter, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.
  (ii) A fair and accurate report of any report or other document circulated to stockholders, shareholders or members by or with the authority of the board of any corporation or association constituted, registered or certified as aforesaid, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.
  (iii) A fair and accurate report of any document relating to the appointment, resignation, retirement or dismissal of directors or officers, circulated to stockholders, shareholders or members of any corporation or association constituted, registered or certified as aforesaid, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.
  (iv) A fair and accurate report of any document circulated by the auditors to stockholders, shareholders and members of any corporation or association, constituted, registered or certified as aforesaid, not being a private or non-reporting company.

(f) A fair and accurate report of any finding, decision, or notice issued by:
  (i) An ombudsman, or officer exercising similar functions, appointed under the law of Canada or of any province or territory;
  (ii) A press council in Canada;
  (iii) A judicial council in Canada;
  (iv) A person or board authorized by law or by the parties to arbitrate or mediate any labour dispute between the parties in Canada.

(g) Any information made available officially from court documents in criminal cases in Canada to which the public has a right of access.

(h) A fair and accurate report of any official notice or other matter (including photographs, sketches, or other pictorial representations) issued for the information of the public by, or on behalf of, any Canadian federal, provincial or territorial government department or officer of state, or by any public or local authority or police force in Canada.

(i)
  (i) A fair and accurate report of any proceedings in public before a foreign court duly constituted by the *de facto* or effective government of the state in which such court exercises jurisdiction.
  (ii) A fair and accurate report of any proceedings in public of the legislature of any foreign state recognized by Canada.
  (iii) A fair and accurate report of any publication issued under the authority of a government or legislature of a foreign state recognized by Canada.

(j) Any report or other matter not mentioned in section 6 that would be privileged by virtue of the common law.

Publication of public concern and public benefit

8. Sections 6 and 7 do not protect the publication of matter not of public concern and the publication of which is not for the public benefit.

5. Explanation of the Proposed New Sections

Our proposals will make two important changes to the law as presently set out in section 4 of the Act.

First we have in section 6 and in subsection 7(3) greatly expanded the types of reports or matters protected by qualified privilege. We have done so because we believe that the public has a right to be informed of such matters, and because we believe that the granting of the defence of qualified privilege will encourage the reporting of such matters. A better informed public will be better able to participate in debates and decisions on matters of great importance. Most items in the list are *reports*, but it should also be noted that publication of matters other than reports are protected under paragraphs 6(e), (g), (h), and 7(3)(a), (g) and (j); the reason for extending the privilege to these non-report matters does not require separate explanation.

Second, for reasons outlined above,[116] we have divided the privileged reports or matters into two categories: Section 6 lists publications that are privileged without affording the plaintiff a reply. Section 7 lists publications that are not privileged if the defendant failed or refused to publish a reasonable statement by way of explanation or contradiction.

The proposed new sections are based on the United Kingdom *Defamation Act, 1952*, and the changes to that legislation proposed in the *Faulks Report*. We introduced changes required to adapt these models to the Canadian context. In an effort to simplify the use of the statute by those such as editors who do not have legal training we have not used the schedules of the United Kingdom model, and we have provided separate sections for the two categories of publications, those not subject to reply and those subject to reply. We also made a few changes of substance. For example, we rejected as too broad a proposal in the *Faulks Report* to include reports of press conferences on matters of "public concern" under the equivalent of our section 7.

Our proposed sections 6 and 7, like the present section 4 and its counterpart in the United Kingdom Act of 1952, limit their protection to newspapers and broadcasters. We believe that this is justified, for reasons we explained above,[117] because of the special role played by the media in providing information on matters of public importance and concern. This limitation on the protection afforded individual reputation should not be extended beyond what is necessary to accomplish the needs of public information. Hence we do not agree with the recommendation of the *Faulks Report*[118] that the privilege should be extended to all publishers.

It must also be remembered that although we have greatly expanded the list of reports or matters protected by qualified privilege we have not changed the other requirements of the present law that limit the scope of the defence provided by the Act. We have retained the rule that reports must be "fair and accurate."[119] The privilege remains qualified, that is, it will be defeated by proof of malice.[120]

In addition, under our proposal, as under the present law, the privilege does not extend to "the publication of matter not of public concern and the publication of which is not for the public benefit." These limitations on the scope of the defence are essential to the statutory scheme. It is the public's right to be informed of matters of legitimate public concern that provides the basic rationale for the existence of the privilege. If the media choose to publish gossip and scandal that serves no purpose but to increase circulation, entertain or satisfy public curiosity, the statutory defence will not apply. Both statutory conditions, "public concern" and "public benefit," must be satisfied if the defendant wishes to take advantage of the privilege.[121] "It does not necessarily follow from the fact that the public are interested in the subject-matter of the report that it is for their benefit that such report should be published."[122] Furthermore, "it must be proved that the publication of *the actual words complained of* was for the public benefit."[123] It is not sufficient to show that the occasion reported on, such as a public meeting or inquiry, was for the public benefit. What constitute public benefit and public concern are questions of law for the judge to determine.[124] The usefulness and effectiveness of the broadened statutory privilege depend in part on the definition of these qualifications by the courts in individual cases in a way that will enable the media to enjoy the protection the provisions are intended to give but prevent the privilege being abused.

---

[116] *Supra*, heading D. 3.

[117] *Supra*, headings A. 3. and D. 2.

[118] Paras. 229-231.

[119] For an explanation of this requirement, *see* heading B. 1., *supra*.

[120] On the requirement and meaning of malice, *see* heading A. 2., *supra*.

---

[121] *Kelly* v. *O'Malley*, (1888) 6 T.L.R. 62, at 64 (Q.B.); *see also Sharman* v. *Merritt and Hatcher (Limited)*, (1916) 32 T.L.R. 360 (K.B.).

[122] *Gatley*, para. 674.

[123] *Ibid.*, citing *Pankhurst* v. *Sowler*, (1887) 3 T.L.R. 193 (Q.B.).

[124] *Hefferman* v. *"Regina Daily Star"*, [1930] 3 W.W.R. 656 (Sask. K.B.), cited with approval in *Gatley*, para. 674, note 79.

CHAPTER IX THE DEFENCE OF FAIR COMMENT

A. The Elements of the Defence

The substantive law relating to the defence of fair comment in British Columbia is governed entirely by the common law.[125] The basic elements of the defence, which are the same in Canada as in England, are summarized in *Gatley*, as follows:

> **692.** *What must be proved.* To succeed in a defence of fair comment the defendant must show that the words are comment, and not a statement of fact. He must also show that there is a basis of fact for the comment, contained or referred to in the matter complained of. Finally, he must show that the comment is on a matter of public interest, one which has expressly or implicitly [been] put before the public for judgment or is otherwise a matter with which the public has a legitimate concern. If, however, the plaintiff can show that the comment was not made honestly or was actuated by malice, he will defeat the plea.

Unlike the statutory privileges discussed under the previous heading, the defence of fair comment is not limited to the media; it is available to all defendants in an action for libel or slander. The defence applies only to defamatory comment, not, as is the case with privilege, to defamatory allegations of fact.[126] If the ordinary reader or hearer would regard the matter as fact rather than comment, the defence is not available.

The comment must be based on fact, but the factual basis does not have to be set out in the publication, provided it sufficiently indicates the subject matter.[127] Thus as indicated in the British Columbia Court of Appeal decision in *Vander Zalm* v. *Times Publishers*,[128] a cartoon critical of a prominent cabinet minister need not express its factual basis. But the facts, expressed or implied, must be true. The commentator must get his facts right, if he wishes to escape liability for defamatory comments regarding those facts.[129] Hence in an English case a theatre critic lost the protection of the defence, because he criticized a play for a portrayal of adultery that was not present in the play.[130]

The defence only applies to comments on matters that are legitimately in the public interest.[131] There is no precise definition of what constitutes public interest in this context, and the categories are not closed. The most well recognized category includes matters which the plaintiff has expressly or impliedly submitted for public criticism: works of art displayed for public viewing, plays, books, public speeches, and demonstrations. Less well defined are matters of such general importance that the public interest in them requires or invites not only factual information but critical public comment: the conduct of legislatures, governments, courts, politicians, charities, educators, and any major business, or social institution.

We considered this aspect of the defence. In our opinion, the law on what constitutes a matter in the public interest is flexible, and has worked satisfactorily, and we see no need to change it.[132]

---

[125] The only non-common law rule is procedural: Rule 19(12)(b) of the Supreme Court Rules, dealing with the rolled-up plea, discussed, *infra*, heading H.

[126] *See, e.g., Jones, supra*, n. 102.

[127] *See, e.g., Kemsley* v. *Foot*, [1952] A.C. 345 (H.L.), where the headline "Lower than Kemsley", followed by an article attacking a rival of the Kemsley newspapers, was held sufficient.

[128] [1980] 4 W.W.R. 259 (B.C.C.A.).

[129] *See, e.g., Holt* v. *Sun Publishing Co.*, (1979) 100 D.L.R. (3d) 447 (B.C.C.A.); *London Artists Ltd.* v. *Littler*, [1969] 2 Q.B. 375 (C.A.). But the rule may not apply where the facts are stated on a privileged occasion: *see Gatley*, para. 719, and the discussion of this issue, *infra*, heading F.

[130] *Merivale* v. *Carson*, (1887) 20 Q.B. 275 (C.A.).

[131] For a detailed discussion of what matters are in the public interest *see Gatley*, paras. 731-746.

[132] The *Faulks Report*, Chapter 6, makes no recommendation on this aspect of the defence.

We recommend no change in the law governing what constitutes a matter of public interest for the purposes of the defence of fair comment.

The use of the word "fair" in the name of the defence is a frequent source of confusion. There is no requirement that the comment be fair in the sense that it is a comment that a reasonable person would make on the facts. The critic may have peculiar and very prejudiced views on the matter, but he is not deprived of the protection of the defence. The question for the jury is not whether the comment was one that they would have made or that the hypothetical, reasonable, informed critic would have made. Such a rule would come perilously close to confining the defence to critics who express the majority opinion. The generally accepted view is that "as long as the comment is not actuated by malice and represents a legitimate opinion honestly held by the speaker, it will be protected."[133] One way of applying this rule is to ask the jury to decide whether the comment is one which could have been made on the matter in issue by "any honest man, however prejudiced he might be, or however, exaggerated or obstinate his views?"[134]

The judgments of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.*[135] reveal a sharp difference of opinion on the meaning of "fair." The majority and minority disagree on such fundamental matters as whether the test is subjective or objective, the burden of proof, and on the relationship between the requirement of fairness and the issue of malice. We do not attempt to resolve all these problems, as that would require a review and perhaps codification of all aspects of the defence of fair comment.[136] Our recommendations on the requirement of fairness are limited to the issue of its application to the republication of opinions expressed by another, the issue before the Supreme Court in *Cherneskey*.[137]

We share the views expressed in other Commonwealth reports,[138] that the use of the word "fair" is a source of confusion. But we are not prepared in this Report, given the limited scope of our review of the defence, to follow their suggestions to change the name of the defence to "comment." Such a change, if not accompanied by a thorough review of all aspects of the defence, is likely to create more confusion than it removes.

B. The Need for Reform

The importance and value of the defence of fair comment is obvious. It is "one of the essential elements that go to make up our freedom of speech."[139] The public good demands not only accurate information on matters of public concern, but informed and varied comment and criticism of those matters. We have re-examined the law of fair comment with a view to improving its capacity to promote discussion and evaluation of matters of public interest.

In many respects the present law is unsatisfactory. Fair comment has "become a complex defence riddled with technicalities."[140] Furthermore, there are some restrictions on the defence that are not consistent with its fundamental purpose. Minor changes in the common law were made in the United Kingdom in the *Defamation Act, 1952* (U.K.).[141] More sweeping reforms have been recommended there, and in other Commonwealth countries.[142] In Canada, the changes in the 1952 United Kingdom Act prompted similar modifications in Ontario and Nova Scotia. However, the inadequacies of the common law defence of "fair comment" were only fully brought home by the controversial decision of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.*[143] The reform process of other jurisdictions that has been designed to simplify and expand the defence of fair comment has not yet led to any legislative action in British Columbia. In this Report we recommend that measures be taken as soon as possible to bring this province into step with the process of change.

---

[133] Linden, *Canadian Tort Law* 713 (3rd ed., Toronto: Butterworths, 1982). Under heading G, *infra*, we recommend that the requirement that the opinion be honestly held should be modified in the case of a defendant who publishes the opinion of another.

[134] *Gatley*, para. 725, and authorities cited therein, especially *Merivale*, *supra*, n. 130; *see also Cherneskey*, supra, n. 15, discussed, *infra*, heading G. In *Cherneskey*, at 349, Dickson J. argues that the test is "clearly an objective one."

[135] *Supra*, note 15.

[136] The Uniform Law Conference at its 1984 meeting adopted the suggestion in the *Saskatchewan Report* at 115-121, to codify the law of fair comment: *see* summary of discussion of the Uniform Law Conference by the Executive Director, dated 15 January 1984, at 6.

[137] *See*, *infra*, heading G.

[138] *Faulks Report*, para. 152; *New Zealand Report*, paras. 141-142; *Unfair Publication*, para. 129.

[139] *Slim* v. *Daily Telegraph Ltd.*, [1968] 2 Q.B. 157, at 170 *per* Lord Denning M.R. To the same effect, *see*, *e.g.*, *Porter Report*, para. 83; *Faulks Report*, para. 151.

[140] *Unfair Publication*, para. 127; the same criticism was made in the *Porter Report*, para. 83.

C. Proof of Malice Defeating the Defence

If the plaintiff proves that the defendant's comment was actuated by malice, the defence of fair comment is defeated. Malice in this and other contexts has been a source of confusion.[144] As explained earlier,[145] malice in the law of defamation means improper purpose. Subject to what is said later about republication of another's comment, the proper purpose for making a comment is to inform the public of the defendant's honest opinion on a matter of public interest. Should a comment that represents the honest opinion of the defendant be actionable by reason of the defendant's improper purpose in publishing the comment? For example, should a drama critic be able to claim the defence of fair comment if he makes a practice of publishing reviews only of plays that he dislikes in order to destroy the reputation of the plaintiff playwright or theatre?

Law reform bodies in other jurisdictions have taken the view that the only form of malice that is relevant in this context is the publication of a comment that is not the defendant's genuine opinion on the matter. They have accordingly recommended that references to the ambiguous word "malice" should be eliminated, and that legislation should be enacted replacing the malice test with the rule that the comment must represent the defendant's "genuine opinion," or similar words.[146] Under this view, it is considered anomalous that a critic who honestly believes in his criticism should lose the benefit of the defence if he publishes for an improper purpose, but that one who publishes an identical criticism for a proper purpose should escape liability.

These proposals for reform are based in part on the questionable assumption that the elimination of references to malice is merely a change of terminology, and not a change of substance.[147] That is an assumption that is clearly impossible to maintain in Canada in the light of the Supreme Court of Canada decision in *Cherneskey* v. *Armadale Publishers Ltd.*[148] Both the majority judgment of Ritchie J.[149] and the dissenting judgment of Dickson J. distinguish between the elements of fairness and malice; by implication a similar distinction is made by Martland J. in his majority opinion. According to both Ritchie and Martland JJ. the defendant must prove that the comments were an honest expression of his real opinion.[150] According to Ritchie J.[151] the obligation on the plaintiff to prove malice only arises if the defendant has proved the fairness of his comment, which requires proof that it was his genuine opinion. Dickson J. differed from the majority in holding that the test of fairness is objective and that the honesty of his belief is relevant only on the subjective issue of malice, on which the plaintiff bears the onus of proof.[152] But even Dickson J. did not equate malice with lack of belief in the opinion. "Malice includes any indirect motive or ulterior purpose."[153] Lack of belief in the opinion expressed is, according to him, only one way that malice can be established, and one that is inappropriate when the defendant is a publisher of another's opinion.[154]

---

[141] Section 6 of the Act relaxed the harsh rule that *all* supporting facts, however trivial or minor, had to be proved to substantiate a defence of fair comment: see *infra*, heading F.

[142] *See Faulks Report*, Chapter 6; *Unfair Publication*, paras. 127-131; *Report on Defamation* of the New South Wales Law Reform Commission, paras. 161-211; and the *New Zealand Report*, Chapter 8.

[143] *Supra*, n. 15, discussed, *infra*, heading G; among the studies prompted by the *Cherneskey* case is the *Saskatchewan Report*, and the work done by the Uniform Law Conference, which led to the 1979 amendment to the Uniform Act.

[144] For examples of cases where juries appear to have misunderstood the concept *see: McLoughlin* v. *Kutasy*, (1979) 8 C.C.L.T. 105 (S.C.C.); *Davies and Davies Ltd.* v. *Kott*, (1979) 9 C.C.L.T. 249 (S.C.C.).

[145] *Supra*, Chapter VIII, heading A. 2.

[146] New South Wales Law Reform Commission, *Report on Defamation*, paras. 196-206; New South Wales *Defamation Act*, 1974, s. 32(2) ("did not represent the opinion of the defendant"); Law Reform Commission of Western Australia, paras. 12.4-6; *Faulks Report*, paras. 153-160; *Unfair Publication*, paras. 129-130; New Zealand *Report of the Committee on Defamation*, paras. 148-153. The last three mentioned reports recommend the phrase "genuine opinion."

In Canada, therefore, the elimination of references to malice in the law of fair comment would involve a change of substance in our law. We are not, however, convinced that it would be wise to make this change. Equating malice with lack of belief in the opinion expressed would clearly be inappropriate in cases of republication.[155] There may well be other cases where the defendant has published an opinion with a genuine belief in its validity, but nevertheless has been actuated to publish that genuine opinion for an improper purpose. The only proper purpose for the publication of a defamatory comment is to inform the public of the defendant's or of another's honestly held opinion on a matter of public importance. To publish an opinion for any other purpose is not consonant with the broad purpose of the defence, the promotion of freedom of speech in a democratic society. In our view the rule that malice destroys the defence of fair comment has not impaired the policy of the law to protect the interest in free speech. It must be remembered that the present law requires the *plaintiff* to prove that the publication of the comment was *actuated by the malice* of the defendant. Furthermore, the malice of one defendant will not destroy the defence for another.[156] Under our Rules of Court, the plaintiff has the right to examine for discovery each defendant on matters relating to the issue of malice. If the onus of proof lay on the defendant, there would be a danger that the defence of fair comment would be significantly eroded.

We recommend, therefore, that the present rule that malice, in the sense of improper purpose, destroys the defence of fair comment, and the rule that the malice of one defendant should not destroy the defence for other non-malicious defendants should be retained.

We recommend also that the burden of proving malice should remain, as under the present law, on the plaintiff.

---

[147] *See, e.g., Faulks Report*, paras. 153-160.

[148] *Supra*, n. 15.

[149] *Ibid.*, at 331, and 338-339.

[150] *Ibid.*, at 325 *per* Martland J., and at 330, 321, 324, 336 *per* Ritchie J.

[151] *Supra*, n. 149.

[152] This aspect of the judgment is discussed in detail, *infra*, heading G.

[153] *Supra*, n. 15, at 346.

[154] The key passages are quoted, *infra*, heading G.

[155] *See infra*, heading 7, where we recommend changes to the law in this area.

[156] *See Cherneskey*, *supra*, n. 15, at 355-356 *per* Dickson J., and the authorities cited therein.

D. The Distinction between Fact and Comment

As explained above,[157] the defence applies only to comment and not to facts. The necessity to distinguish fact from comment may present difficult problems to the judge or the jury.[158] Nevertheless, the requirement is inherent in the nature of the defence, and must be retained. It is not possible, in our view, to devise a meaningful legislative test to distinguish between comment and fact. The matter is best left to be determined on a case by case basis.

We recommend, therefore, that there be no change in the law on the necessity to distinguish fact from comment.

E. Imputations of Dishonourable or Corrupt Motives

It is generally assumed that the defence of fair comment does not apply to comments that impute corrupt or dishonourable motives to the plaintiff. The origin of the supposed rule is an ambiguous pronouncement of Cockburn C.J. in 1863 in *Campbell* v. *Spottiswoode*.[159] The rule is summarized in *Gatley* as follows:[160]

> An imputation of corrupt or dishonourable motives will render the comment unfair, unless such imputation is warranted by the facts truly stated or referred to, i.e. is an inference which a fair minded man might reasonably draw from such facts, and represents the honest opinion of the writer.

The status of the rule has been doubted, but it has recently been applied in British Columbia.[161] The nature of the supposed exception is ambiguous.[162] According to one view, the defendant will be held liable unless he can prove the truth of the allegations of corrupt or dishonourable motives. Another view suggests that the defendant will escape liability if he shows that the comment was reasonable. The meaning of "corrupt or dishonourable motives," or the alternative formulation "base or sordid motives" is also unclear. The Faulks Committee[163] thought that the rule was ambiguous and added complexity and difficulty to the law. They concluded that there is no need for the rule, because the normal principles of fair comment would give adequate protection: imputations of dishonourable or corrupt motives would only fall within the ambit of the defence if they were relevant to the facts stated or relied on. As Collins M.R. stated in *McGuire* v. *Western Morning News Co.*,[164] "'fair' embraces the meaning of honest and also of relevancy. The view expressed must be honest and must be such as can fairly be called criticism." Furthermore, the comment must be on a matter of public interest. The Faulks Committee accordingly recommended the statutory abolition of the rule. Similar recommendations have been made in Canada by the Uniform Law Conference.[165] The abolition of the rule has also been recommended in New Zealand,[166] and Australia.[167] We agree that the rule is an unnecessary complexity and an undesirable limitation on freedom of speech in so far as it may inhibit relevant criticism of the conduct of public affairs.

---

[157] *Supra*, heading A.

[158] *See*, *e.g.*, *Jones* v. *Bennett*, (1968) 2 D.L.R. (3d) 291 (S.C.C.); *Vander Zalm* v. *Times Publishers et al.*,(1980) 4 W.W.R. 257 (B.C.C.A.); *Porter Report*, para. 88.

[159] (1863), 3 B. & S. 769, at 776-777, 122 E.R. 288.

[160] Paragraph 720, and *see also* para. 724.

[161] *Masters* v. *Fox*, (1978) 85 D.L.R. (3d) 64 (B.C.S.C.).

[162] For a discussion of the meaning of the rule *see*, *e.g.*, *Gatley*, paras. 720-724; *Faulks Report*, paras. 162-168.

[163] *Faulks Report*, paras. 162-169.

[164] [1903] 2 K.B. 100, at 110.

[165] The *Saskatchewan Report* at 118-119 proposed the abolition of the rule, a change that would be accomplished through the codification proposed therein at 120-121. The summary of the discussion of the Saskatchewan proposals at the Uniform Law Conference in the report prepared by the executive director, dated 15 January 1984, indicates that the Conference adopted the Saskatchewan proposal for codification, which by inference involves the abolition of the rule.

[166] *New Zealand Report*, paras. 156-160, Draft Bill, s. 11(5) Appendix VII.

[167] New South Wales Law Reform Commission, *Report on Defamation*, Appendix D, paras. 192-193, a recommendation implemented by the N.S.W. *Defamation Act*, 1974, s. 30(4); *Unfair Publication*, para. 131.

We recommend, therefore, that the rule regarding allegations of corrupt or dishonourable motives should be abolished by including in the new *Defamation Act* the following section patterned on the draft bill proposed in the *Faulks Report:*[168]

> **9.** The defence of fair comment in an action for defamation shall not be limited or otherwise affected by reason only of the fact that dishonourable, corrupt, base or sordid motives have been attributed to the plaintiff.

F. Truth of the Facts Underlying the Comment

The well established rule is that the defence of fair comment is only available if the comment is based on accurate facts. The exception to this rule is that where the facts were stated on a privileged occasion, the defendant who comments on those facts may succeed on the defence without proving the truth of the facts.[169] Thus the defence is available to one who, indicating the source, accurately reports facts stated by others during the course of judicial proceedings,[170] or in Parliament, even if the facts reported are not true. The authorities usually refer to facts stated on occasions protected by absolute privilege, and it is unclear if the exception applies equally to facts stated on occasions protected by qualified privilege. We make no recommendation with respect to the common law regarding fair comments on facts stated on a privileged occasion.

The facts need not be stated as part of the publication containing the comment, provided the reasonable person of ordinary intelligence would understand the factual basis.

The defendant who publishes the facts with his comment may be at a disadvantage. As the Porter Committee noted,[171] an unduly rigid rule has evolved in cases where the matter complained of consists in part of fact, and in part of expressions of opinion. The defence in such cases "may fail *in limine* if one of the defamatory statements of fact contained in the alleged libel is incorrect in some minor and apparently unimportant detail." The defendant in such cases is in a worse position than one who does not publish the facts with the comment. The latter may plead the facts relied on in the particulars of the defence, and he will not fail merely because he is unable to prove all those particulars.[172] Lord Porter stressed this point in *Kemsley* v. *Foot*:[173]

> Twenty facts might be given in the particulars and only one justified, yet if that one fact was sufficient to support the comment so as to make it fair, a failure to prove the other nineteen would not of necessity defeat the defendants' plea.

The Porter Committee[174] recommended the abolition of the rule requiring strict proof of all facts published with the comment. Parliament purported to give effect to this recommendation by enacting s. 6 of the *Defamation Act*, 1952:

> **6.** In an action for libel or slander in words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression

---

[168] Appendix III, s. 5(4). The only differences in the wording are the use of the name "fair comment" in our proposal, and the addition to our proposal of the words "dishonourable, corrupt."

[169] *Gatley*, para. 719; *Duncan & Neill*, para. 12.07; *London Artists Ltd.* v. *Littler*, [1969] 2 Q.B. 375, at 395 *per* Edmund Davies L.J. (C.A.); *Mangena* v. *Wright*, [1909] 2 K.B. 958 (K.B.), the case credited as the origin of the rule.

[170] *Grech* v. *Odhams Press Ltd.*, [1958] 2 Q.B. 275 (C.A.) (*dicta*).

[171] *Porter Report*, para. 87.

[172] *Gatley*, para. 713, footnote 92.

[173] [1952] A.C. 345, at 358 (H.L.).

[174] *Porter Report*, paras. 89-90.

> of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

Identical legislation was adopted in Ontario,[175] and Nova Scotia.[176] However, the legislation was found inadequate by the Faulks Committee.[177] If strictly construed, the provision only applies to facts "in the words complained of." Thus if the plaintiff complained of only part of a publication, the defendant would not be able to rely on the truth of facts contained in the rest of the publication, even if those facts provided the main or only foundation for the comment. We believe there is merit in this criticism of section 6 of the 1952 Act. We also agree with the Porter Committee, the Faulks Committee, and others[178] that the rigid common law rule should be eliminated by statute. In our view the law should only require the defendant to prove the substantial truth of the factual basis for his comment, whether or not the facts are published with the comment.

We recommend that the common law rule requiring strict proof of the accuracy of all facts published by the defendant as the basis for the comment should be abolished by enacting a provision, identical in substance to the draft bill proposed by the Faulks Committee, as section 10 of our new proposed *Defamation Act:*[179]

> **10.** In an action for defamation in respect of words including or consisting of expression of opinion, a defence of fair comment shall not fail by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation therefore.

As indicated in the *Faulks Report*,[180] this provision "will enable the defendant to rely on assertions of fact contained elsewhere in the publication, or indeed upon any other facts which may be relevant in support of the comment complained of." The proposal is consistent with the decision recently taken by the Uniform Law Conference of Canada.[181]

G. *Cherneskey* v. *Armadale Publishers Ltd.*

The defence of fair comment has received much attention since the controversial 1978 decision of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.*[182] The Plaintiff was a lawyer and Saskatoon City alderman. The defendants were the editor, and corporate owner and publisher of the daily newspaper in Saskatoon. Two law students wrote a letter to the editor of the newspaper, and it was published in the "Editor's Letter Box" section. The letter made defamatory comments about the attitude adopted by the plaintiff during a City council debate of a controversial issue. Cherneskey sued only the newspaper publisher and editor, not the letter writers. The defendants were refused leave on interlocutory motion to add the authors of the letter as third parties.[183] Neither letter writer was called as a witness at the trial. There was no evidence adduced to show that the letter represented the honest opinion of its authors. The editor and responsible officer of the newspaper company testified that they did not share the authors' opinion. The trial judge refused to put the defence of fair comment to the jury, who found for the plaintiff. The majority of the Saskatchewan Court of Appeal[184] ordered a new trial on the ground that the trial judge had erred in his ruling on fair comment. The majority were of the view that the defence of fair comment should succeed if the newspaper honestly believed that the opinions expressed represented the real opinions of the writers, and if the newspaper was not actuated by malice in publishing the letter. The Supreme Court of Canada, in a six to three decision, upheld the ruling of the trial judge, and restored the judgment in favour of the plaintiff. The majority judgments of Martland J. (Laskin C.J.C., and Beetz J., concurring), and of Ritchie J. (Laskin C.J.C., Pigeon and Pratt JJ., concurring) are open to more than one interpretation.

---

[175] *Libel and Slander Act*, R.S.O. 1980, c. 237, s. 24, with one stylistic change in the use of "for" instead of "in respect of."

[176] *Defamation Act*, R.S.N.S. 1967, c. 72, s. 9.

[177] *Faulks Report*, para. 172.

[178] *Saskatchewan Report* at 120; Uniform Law Conference, *supra*, n. 165, at 6; *Unfair Publication*, para. 130; *New Zealand Report*, paras. 143-147, Draft Bill, s. 11(4), Appendix VII.

[179] *Faulks Report*, para. 173, and Draft Bill, s. 5(2)(a). The only difference in our wording is that we use "fair comment" rather than "comment."

[180] Para. 174.

[181] *Supra*, n. 178.

[182] *Supra*, n. 15.

[183] (1974) 53 D.L.R. (3d) 79 (Sask. C.A.).

The view of Martland J. appears to have been that a defence of fair comment will apply if the defendant who republished the opinion of another can prove that he or the other person honestly held the opinion. A "defence of fair comment is dependent upon the fact that the words in issue represent an honest expression of the real view of the person making the comment."[185] "There is no evidence to show that the material published, . . . represented the honest opinion of the writers of the letter, *or* that of the officers of the newspaper which published it."[186] [emphasis added.]

Although there are passages in the judgment of Ritchie J. supporting the above view,[187] most of his judgment appears to proceed on the assumption that the defence of fair comment will fail unless it is proved that the *re-publisher* honestly held the opinion:[188]

> . . . in my view a plea of fair comment by way of defence does not of itself have the effect of saddling the plaintiff with the burden of proving that the comment was unfair. This plea constitutes a vital part of the case for the defendants and in my view the burden of proving each ingredient of the defence so pleaded should rest upon the party asserting it. One of these ingredients is that the person writing the material complained of must be shown to have had an honest belief in the opinions expressed *and it will be seen that, in my view, the same considerations apply to each publisher of that material*. [emphasis added]

He reiterates this approach later:[189]

> If the publication of the libel had been confined to the letter and the writers had been sued, or alternatively, if it had originated with the newspaper and its publisher, it would in either case have been necessary to show honest belief in order to sustain the defence of fair comment. The same considerations would thus in my opinion apply to the newspaper and the writers.
>
> In my opinion each publisher in relying on the defence of fair comment is in exactly the same position as the original writer.

It is even possible to interpret the judgment of Ritchie J. as requiring the newspaper to prove that the letter represented the honest opinion of *both* the writers and the newspaper, but it is submitted that is not a correct interpretation of the judgment, and that Ritchie J. would have allowed the defence of fair comment, even in the absence of proof of the beliefs of the authors of the letter, if the newspaper had proved that it believed the opinions expressed therein.[190]

---

[184] (1977) 79 D.L.R. (3d) 180, (Sask. C.A.).

[185] *Supra*, n. 15, at 325.

[186] *Ibid.*, at 326.

[187] *Ibid.*, at 339.

[188] *Ibid.*, at 330.

[189] *Ibid.*, at 336.

[190] This possible interpretation is also also rejected as "unlikely" by the University of Alberta Institute of Law Research and Reform, Report No. 35, *Defamation: Fair Comment and Letters to the Editor* (Edmonton: University of Alberta, 1979).

Whatever doubts may exist as to the proper interpretation of the majority judgments, there is no doubt that they seriously restrict the scope and practical value of the defence of fair comment when it is pleaded by a re-publisher.

In his dissenting judgment, Dickson J. took the position that the rejection of the defence of fair comment by the majority was based on a confusion of the "objective" test of fairness, with the subjective test of "malice":[191]

> There is in some of the cases confusion between the requirement that a comment be "fair" and that it not be made with malice. In fact, these two requirements are quite distinct. Shortly stated, the test of whether a comment is "fair comment" in law is an "objective" test, *i.e.*, is the comment one that an honest, albeit prejudiced, person might make in the circumstances? . . . Even if the comment passes this test, the defence of fair comment will fail if it does not pass the subjective test of whether the publisher himself was actuated by malice. . . . There would be no point in having the second test if the first one included the ingredient of the subjective test. Many cases merge these two elements to ask whether the statement in question is the publisher's real opinion. This works passably well when the defendant is the writer, but it does not work at all if he is not, as in the case where, as here, a newspaper has printed a letter in its letters to the editor space.
>
> In my view, the legal position is this: If a defendant raises the defence of fair comment, he has the burden of establishing that the facts on which it is based are true and that it is *objectively* fair; if he discharges this burden he will, nevertheless, lose the defence if the plaintiff proves that the comment was published maliciously. It is this second stage of the analysis which raises the *subjective* issue of the defendant's state of mind or motive. . . Where the defendant is the writer or commentator himself, proof that the comment is not the honest expression of his real opinion would be evidence of malice. If the defendant is not the writer or commentator himself, but a subsequent publisher, obviously this is an inappropriate test of malice. Other criteria will be relevant to determine whether he published the comment from spite or ill will, or from any other indirect and dishonest motive.

This Report is not the place to debate whether the majority or the minority in *Cherneskey* properly interpreted the pre-existing common law.[192] What is appropriate is to examine the policy issues raised by the decision. On this we share the concerns eloquently expressed by Dickson J.:[193]

> The important issue raised in this appeal is whether the defence of fair comment is denied a newspaper publishing material alleged to be defamatory unless it can be shown that the paper honestly believed the views expressed in the impugned material. It does not require any great perception to envisage the effect of such a rule upon the position of a newspaper in the publication of letters to the editor. An editor receiving a letter containing matter which might be defamatory would have a defence of fair comment if he shared the views expressed, but defenceless if he did not hold those views. As the columns devoted to letters to the editor are intended to stimulate uninhibited debate on every public issue, the editor's task would be an unenviable one if he were limited to publishing only those letters with which he agreed. He would be engaged in a sort of censorship, antithetical to a free press. One can readily draw a distinction between editorial comment or articles, which may be taken to represent the paper's point of view, and letters to the editor in which the personal opinion of the paper, is or should be irrelevant. No one believes that a newspaper shares the views of every hostile reader who takes it to task in a letter to the editor for error of omission or commission, or that it yields assent to the views of every person who feels impelled to make his feelings known in a letter to the editor. Newspapers do not adopt as their own the opinions voiced in such letters, nor should they be expected to.
>
> . . .
>
> The issue is broader than that. A free and general discussion of public matters is fundamental to a democratic society. . . . Citizens, as decisionmakers, cannot be

---

[191] *Supra*, n. 15, at 345-346.

[192] *Gatley*, para. 691, footnote 1, doubts that *Cherneskey* would be followed in England, and at para. 696, footnote 18, doubts that either the majority or minority views correctly explain the meaning of "fair." The minority view of the meaning of "fair" is criticized at para. 708, and 730, footnote 51. The majority view is criticized at para. 730, footnote 51.

[193] *Supra*, n. 15, at 343-344.

> expected to exercise wise and informed judgment unless they are exposed to the widest variety of ideas, from diverse and antagonistic sources. Full disclosure exposes and protects against false doctrine.
>
> It is not only the right but the duty of the press, in pursuit of its legitimate objectives, to act as a sounding board for the free flow of new and different ideas. It is one of the few means of getting the heterodox and controversial before the public. . . . The public interest is incidentally served by providing a safety valve for people.
>
> Newspapers will not be able to provide a forum for dissemination of ideas if they are limited to publishing opinions with which they agree. . . .Healthy debate will likely be replaced by monotonous repetition of majoritarian ideas and conformity to accepted taste. In one-newspaper towns, of which there are many, competing ideas will no longer gain access. Readers will be exposed to a single political, economic and social point of view.

The majority decision in *Cherneskey* has been greeted with almost universal disapproval.[194] In supporting calls for legislative reform the Law Reform Commission in its *Annual Report 1979* stated,[195] "It seemed totally wrong in principle that the law should stifle freedom of expression and debate on important issues by encouraging the media to publish only opinions with which they agree."

Understandably, newspapers have been particularly outspoken in their criticisms of the case. But the decision is not limited to newspapers. The law of fair comment applies equally to all.[196] *Cherneskey*, therefore, restricts the freedom of all who wish to publish the opinions of others: all news media, radio, television, scholarly journals, books and public speakers. Even on its narrowest interpretation as expressed in the judgment of Martland J. the publisher will be inhibited from publishing another's defamatory opinions for fear that if sued he may not be able to prove that the originator of the opinion honestly believed it.[197]

So strong was the opposition to *Cherneskey* that it provoked a swift response from the Uniform Law Conference, which amended the *Uniform Defamation Act* in 1979 to add the following provision to overrule the decision:

> **9.** (1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if,
>
> (a) the defendant did not know that the person expressing the opinion did not hold the opinion; and
>
> (b) a person could honestly hold the opinion.
>
> (2) For the purposes of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.

In its *Annual Report 1979*[198] the Law Reform Commission urged that high priority should be given to amending the *Libel and Slander Act* by adding such a provision. The Commission expressed some reservations about the wording of the section in the Uniform Act, but indicated that such reservations should be submerged in the pursuit of uniformity of laws with regard to the defence.

---

[194] For criticisms of the decision *see*, *e.g.*, Taylor J., "The Case for Reform of the Statute Law Concerning Defamation in British Columbia", prepared for the Judges Law Reform Committee, dated 24 November, 1981, at 9-10; "*Uniform Defamation Act* - Fair Comment," *Report of the Alberta and Ontario Commissioners, Appendix LI*, at 118-119 in Uniform Law Conference of Canada, proceedings of the sixty-first annual meeting, 1979; Doody, "Comment on *Cherneskey* v. *Armadale Publishers Ltd.*" (1980), 58 Can. B. Rev. 174-184; *Report No. 35: Defamation: Fair Comment and Letters to the Editor*, supra, n. 190; Klar, "The Defence of 'Fair Comment,'" (1979) 8 C.C.L.T. 149.

[195] Law Reform Commission of British Columbia, *Annual Report 1979*, Appendix D at 19 (LRC 45, 1980).

[196] *See*, *e.g.*, *Cherneskey*, *supra*, n. 15, at 344-345 *per* Dickson J.

[197] *See* the discussion of the problems facing the publisher in *Defamation: Fair Comment and Letters to the Editor*, *supra*, n. 190, at 7.

[198] *Supra*, n. 195.

"A publication that is national in scope should not have to worry about the defence of fair comment varying from province to province."[199]

Five provinces and the Yukon and Northwest Territories have responded to the calls for reform with legislation designed to reverse *Cherneskey*. Manitoba,[200] the Yukon,[201] Northwest Territories,[202] and Newfoundland,[203] have enacted legislation substantially identical to the Uniform Act. The provisions in Alberta, Ontario and New Brunswick differ in various respects from the Uniform Act.[204] In anticipation of the type of problem considered in *Cherneskey*, changes or clarification of the law were earlier proposed in other Commonwealth countries.[205]

In our opinion the decision in *Cherneskey* should be reversed by legislation in British Columbia at the earliest possible opportunity. We have examined all the legislative models referred to above. Our suggested provision is similar to New Brunswick's (with the addition of a proviso to para. (1)(c) regarding reasonable care). The one important difference between our proposal and the Uniform Act is that we require that the originator of the opinion be identified in the statement complained of. We believe that this restriction, which denies the protection of the provision to those who publish anonymous opinions, is wise. If the identification is not accurate the defendant will still be able to claim the protection of the section if he exercised reasonable care to verify the identity.

We recommend, therefore, that the decision of the Supreme Court of Canada in *Cherneskey* v. *Armadale Publishers Ltd.* should be reversed by including, in the new *Defamation Act*, the following section:

> **11.** (1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if
>
> (a) the defendant did not know that the person expressing the opinion did not hold the opinion;
>
> (b) a person could honestly hold the opinion; and
>
> (c) the person expressing the opinion was correctly identified by name and address in the publication, provided that the defence shall not fail by reason only that the person was not correctly identified if the defendant took reasonable care to verify the identity of the person expressing the opinion.
>
> (2) For the purposes of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion.

H. The Rolled-Up Plea

At common law, a defendant can plead fair comment in one of two ways:[206] First, he can allege "the said words are fair comment on a matter of public interest," in which case he is obliged to give particulars of the facts on which the comment is based. Second, he can adopt the "rolled-up" plea, alleging in so far as the said words consist of statements of fact they are true in substance and in fact, and in so far as they consist of expressions of opinion they are fair comment upon the said facts which are matters of public interest.

---

[199] *Ibid.*

[200] S.M. 1980, c. 30, s. 3.

[201] O.Y.T. 1980 (2d), c. 5.

[202] O.N.W.T. 1980 (1st), c.4.

[203] *Defamation Act*, S.N. 1983, c. 63, s. 11.

[204] Alberta: S.A. 1980, c. 11, s. 2. Ontario: S.O. 1980, c. 35, s. 2; this provision has no equivalent to s. 9(1)(a) of the Uniform Act, an omission that is criticized in *Gatley*, para. 730, footnote 52. New Brunswick: S.N.B. 1980, c. 16, s. 1.

[205] *Faulks Report*, Appendix III, Draft Defamation Bill, s. 5(2)(b); *New Zealand Report*, paras. 150-153.

[206] *See, e.g.*, *New Zealand Report*, paras. 161-162.

Although giving the appearance of raising both the defence of truth and the defence of fair comment, it is effective only to raise the defence of fair comment.[207] The plea has been universally condemned as an uninformative source of confusion, and a trap for the unwary pleader who may be misled by its wording to conclude that it raises a defence of truth to defamatory facts.[208] British Columbia Supreme Court Rule 19(12), and its English equivalent were adopted to require greater precision in pleading.[209] The rule means that the defendant who uses the rolled-up plea must nevertheless give particulars stating which of the words he asserts are statements of facts and of the facts and matters he relies on in support of the allegation that the words are true. The rule requires that one who takes the benefit of the rolled-up plea must take its burden as well.[210] Because of this the rolled-up plea "is now in general disuse in England."[211] The plea has not, however, been abolished, and it has been used in British Columbia in recent cases, with its attendant confusion.[212] Rather than attempt to continue, with mixed success, to deal with the plea through Rule 19(12) we believe that this relic of the past should be abolished by legislation.

We recommend, therefore, that Supreme Court Rule 19(12) should be repealed, and replaced by the following provision in a new *Defamation Act*:

12. The plea known as the rolled-up plea is hereby abolished.

---

[207] *Ibid.*, at 162, citing *Sutherland* v. *Stopes*, [1925] A.C. 47 (H.L.).

[208] *See, e.g.*, *Faulks Report*, para. 176; *New Zealand Report*, para. 164.

[209] *See Vogel* v. *C.B.C.*, (1981) 26 B.C.L.R. 340, at 345 *per* Esson J. (S.C.).

[210] *Ibid.*

[211] *Gatley*, para. 1131, footnote 4.

[212] *See, e.g.*, *Vogel*, *supra*, n. 209; *Khurana* v. *Jouhal and another*, Unreported, S.C.B.C. No. C812036, Vancouver Registry, June 18, 1982, Campbell, L.J.S.C, [1982] B.C.D. Civ. 2453-03.

CHAPTER X PROCEDURE AND LIMITATION PERIODS

A. Production of Radio and Television Tapes

The present law does not require television or radio stations to produce tapes of their broadcasts, except under court order.

Regulations made pursuant to the Canadian *Broadcasting Act*[213] require broadcasters to make and retain copies of broadcasts for a period of four weeks from the date of the broadcast, or for eight weeks if requested by the Canadian Radio-Television Commission, and to produce them to the Commission upon request. These regulations are designed to facilitate the work of the Commission, and not to assist litigants or potential litigants.

The person who believes he has been defamed in a broadcast must either rely on the broadcaster voluntarily making the tapes available or commence action for defamation so that production of the tapes may be ordered. Broadcasters frequently refuse to co-operate. The launching of an action is an inconvenient and expensive way of discovering what may turn out to be innocuous broadcast material.

To avoid these difficulties we believe that the law should require the production of a tape or a copy upon demand by a person who has reason to believe that he has been defamed, provided the demand is made within four weeks of the broadcast, and the person making the demand tenders a reasonable fee for the copy or the service. Ideally the law should be incorporated in the federal Act or Regulations, and representations should be made to the federal government to this effect. In the absence of federal legislation we suggest that the matter should be dealt with in provincial legislation.

We recommend, therefore, that legislation should be enacted to require production of tapes of broadcasts to persons who believe they have been defamed, that representations should be made to the federal government requesting federal legislation to this effect, and that the new *Defamation Act* should include the following section:

> **21.** (1) Where a person has reason to believe that he has been defamed in a broadcast, he may by a demand in writing delivered to the owner or operator of the broadcast station within four weeks of the broadcast, require the broadcaster to permit him to hear or view a tape of the broadcast, and receive a copy of the tape.
>
> (2) Where a demand is received under subsection (1) the broadcaster shall within 48 hours, upon the tender of a reasonable fee by the person making the demand, permit the person making the demand to hear or see the tape, and provide him with a true copy thereof.

B. Section 5 of the *Libel and Slander Act*

Section 5 of the *Libel and Slander Act* provides:

> **5.** In an action for libel contained in a public newspaper or other periodical publication or in a broadcast, one clear day must be allowed to elapse between the cause of action complained of and the issue of the writ on the libel.

This provision adds a needless technicality to the law. The occasions on which it could be invoked are likely to be rare, as seldom will the plaintiff be able to respond with such speed. If the purpose is to allow passions to cool, then one day is probably not sufficient; it takes time to work up a real sense of indignation. The section serves no useful purpose, and it is inconsistent with the goal of simplifying the law.

We recommend, therefore, that section 5 of the *Libel and Slander Act* should be repealed.

---

[213] R.S.C. 1970, c. B-11; Radio (A.M.) Broadcasting Regulations, C.R.C. 1978, c. 379, s. 4; Radio (F.M.) Broadcasting Regulations, C.R.C. 1978, c. 380, s. 5; Television Broadcasting Regulations, C.R.C. 1978, c. 381, s. 5.

C. Notice Requirements

Section 14 of the *Uniform Defamation Act* provides:

> **14.** (1) No action lies unless the plaintiff, within three months after the publication of the defamatory matter came to his notice or knowledge, has given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the defamatory matter complained of.
>
> (2) The notice shall be served in the same manner as a statement of claim.

There is no comparable notice provision in British Columbia law, or in the United Kingdom.[214] Should the plaintiff ever be required to give notice of an intention to bring action as a condition precedent to the issue of a writ? At first blush such a rule would seem to be an effective way of encouraging prompt corrections, retractions or apologies, and thus discouraging unnecessary actions.[215] There is, however, no evidence that notice provisions bring about these desirable results. The notice is a requirement for the plaintiff's success, not the defendant's. If the defamed person wants an apology, or retraction he can always demand one, whether or not the law contains a notice requirement. The defendant who was not aware of the defamation until sued, can still apologize and take advantage of the rule in section 6 of the *Libel and Slander Act*. In our view a notice requirement such as that contained in the *Uniform Defamation Act* would serve no useful purpose, but would have several disadvantages:[216] it would create a new limitation period; and increase the difficulties and expense of litigation, and the law's technical complexity.

We recommend, therefore, that notice requirements such as those set out in section 14 of the *Uniform Defamation Act* should not be introduced into the law of this province.

D. The Notice Required in Actions Against the C.B.C.

Section 10 of the *Crown Liability Act*[217] requires 90 days notice before one can commence an action for defamation against the Canadian Broadcasting Corporation or any other Crown corporation. The section is an archaic remnant of an age when it was in vogue to protect the Crown against suit. No individual defendant, least of all a national broadcaster, should receive preferential treatment. As the law now stands it is unfair to litigants,[218] creates irrational, technical hurdles, and discriminates against other broadcasters.

We recommend, therefore, that the federal government be requested to repeal section 10 of the *Crown Liability Act*.

E. Prohibition of Jury Trials Against the Crown

Section 13 of the federal *Crown Liability Act*,[219] and section 4(3) of the British Columbia *Crown Proceeding Act*[220] prohibit trial by jury in actions against the Crown. The federal enactment prohibits jury trials in actions against the C.B.C., among others. The arguments against trial by jury in defamation cases,[221] whatever their merit, do not support the discriminatory treatment of actions involving the C.B.C., or other Crown agencies. Supreme Court Rules 39(19) and (20) give the plaintiff or the defendant the right to require a jury trial in defamation actions. This right, we believe, should continue, and should be extended to actions against the Crown, including the C.B.C.

---

[214] *Gatley*, para. 1001; *see also* the review of case law from jurisdictions with such notice requirements, *Ibid.*, footnotes 1-4.

[215] *See Saskatchewan Report* at 129; *Gatley*, para. 1001.

[216] The *Saskatchewan Report* at 130-131 proposes changes to s. 14; these were considered and referred back to the Saskatchewan Commissioners for further study by the 1984 Uniform Law Conference: *see* summary of discussion by Executive Director, dated January 15, 1984, at 8.

[217] R.S.C. 1970, c. C-38.

[218] *See* criticism of this Canadian rule in *Gatley*, para. 1001, footnote 3, where the special rules applicable to the C.B.C. are characterized as "a blot on any civilized legal system." *See also Vulcan Industrial Packaging Ltd.* v. *C.B.C.*, (1979) 94 D.L.R. (3d) 729, at 730 (Ont. S.C. in Chambers); *Burnett* v. *The Queen In Right of Canada*, (1979) 23 O.R. (2d) 109 (H.C.).

[219] *Supra*, n. 217.

[220] R.S.B.C. 1979, c. 86.

We recommend, therefore, that Supreme Court Rules 39(19) and (20), guaranteeing to both the plaintiff and the defendant the right to a jury trial in defamation cases, should remain unaltered.

We recommend also that the British Columbia *Crown Proceeding Act* should be amended so as to permit trial by jury in defamation actions against Crown agencies.

We recommend also that the federal government be requested to amend section 13 of the *Crown Liability Act* so as to permit trial by jury in defamation actions against Crown agencies, such as the C.B.C.

F. Limitation Periods in Actions Against the Media

All actions in defamation are now subject to a two year limitation period,[222] the same period that applies to many other tort actions, such as actions for negligence for personal injury. The Committee considered whether there should be a special, shorter limitation period for actions brought against the media. The most usual limitation period in other provinces is also two years.[223] Our limitation period runs from the date of the publication, the date the cause of action arose. Some jurisdictions specify a different limitation period or point in time at which the period begins to run. Section 15 of the Uniform Defamation Act, for example, provides that actions against the media must be commenced within 6 months of the plaintiff learning of the publication.[224]

The two year limitation period works to the disadvantage of defendants: with the passage of time notes and tapes may be lost or destroyed, and memories weakened. But these are not problems unique to defamation actions. Plaintiffs may have legitimate reasons for delay, such as ignorance of the defamation, insufficient money to finance an action, and the time required to investigate the matter. Most defamation actions are in fact commenced within a year. On balance we favour maintaining the present rule that seems to strike an acceptable balance between the interests of plaintiffs and defendants. Furthermore it is desirable to avoid proliferation of special limitation periods that are traps for the unwary litigant or lawyer. Recent years have seen many moves to simplify the law governing limitations of actions. We do not wish to go against this welcome trend to change the defamation limitation of action rule that seems to have worked reasonably well in practice.

We recommend, therefore, that there be no change in the *Limitation Act* provision that provides a two year limitation period for defamation actions.

---

[221] *See, e.g., Faulks Report*, paras. 450-516. The Committee recommended restrictions on the right to a jury trial: *Ibid.*, at 516.

[222] *Limitation Act*, R.S.B.C. 1979, c. 236, s. 3(1)(c).

[223] *See* the summary of Canadian laws in the *Saskatchewan Report* at 131-132.

[224] The *Saskatchewan Report* at 133 recommended amendments to the rules in the Uniform Act that would make the period dependent on whether or not the plaintiff is claiming special damage. This proposal was referred back to the Saskatchewan Commissioners for further study by the Uniform Law Conference of 1984: *supra*, n. 216, at 9.

G. Jury Verdicts: Section 14 of the *Libel and Slander Act*

Section 14 preserves the rights of the jury first enacted in *The Libel Act, 1792*, (Fox's Act).[225] The statute was enacted to deal with criminal libel, but it has long been part of the tort law. "Since the Libel Act, 1792, (usually called Fox's Act) 'libel or no libel' has always been essentially a question for the jury."[226] We do not wish to destroy this tradition, but we believe that the time has come to modernize the language of this provision in the manner suggested in the Uniform Act.

We recommend, therefore, that the substance of section 14 should not be changed, but that the language should be modernized by including in the proposed *Defamation Act* the following section, identical to section 6 of the *Uniform Defamation Act*:

> **13.** On the trial of an action for defamation
>
> (a) the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action;
>
> (b) the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and
>
> (c) the jury may on such issue find a special verdict, if they think fit so to do,
>
> and the proceedings after verdict, whether general or special, shall be the same as in other cases.

H. Section 17 of the *Libel and Slander Act*

Section 17, which states that it is not necessary to set out obscene matter in pleadings, is based on section 7 of the 1888 English Act.[227] It first became part of the law of British Columbia in 1897,[228] and, apart from matters of style, there have been no changes since that date. The equivalent section in England was repealed in 1905.[229] Whatever purpose it may have served in another age, it serves no useful function in a modern defamation law.

We recommend, therefore, that section 17 of the *Libel and Slander Act* be repealed.

I. Place of Trial: Section 18 of the *Libel and Slander Act*

Section 18(1) imposes restrictions on the place of the trial of actions for defamation against the newspapers and periodicals. By virtue of section 20, these provisions apply, with necessary modifications, to broadcasters. These restrictions do not apply under the general law. We see no reason for adding this technical obstacle to the law. Section 18(2) seems to be a frank admission that there may be cases where the rule will cause injustice. Such injustice can be avoided most effectively and simply, not by granting the court a broad discretion under section 18(2), but by eliminating the rule that gives rise to the need for such statutory discretion, section 18(1).

We recommend, therefore, that section 18 of the *Libel and Slander Act* be repealed.

---

[225] 32 Geo. III, c. 60.

[226] R. Heuston, R. Chambers, *Salmond and Heuston on the Law of Torts*, 137 (18th ed., 1981).

[227] *Law of Libel Amendment Act, 1888*, 51 & 52 Vict., c. 64.

[228] *Law of Defamation Amendment Act*, R.S.B.C. 1897, c. 120, s. 14

[229] *Indictments Act, 1915*, 5 & 6 Geo. 5, c. 90, s. 9 and Schedule 2.

J. Section 19 of the *Libel and Slander Act*

This section provides protection to the media against frivolous actions by giving them the right to demand security for costs. We can see no reason why this special protection for the media should be continued. There are other ways of dealing with frivolous actions under Supreme Court Rules 18, 18A and 19(24) that appropriately apply to all defendants.

We recommend, therefore, that section 19 of the *Libel and Slander Act* be repealed.

K. Section 20 of the *Libel and Slander Act*

Since section 20 merely makes sections 17, 18, and 19 applicable to broadcasters, our recommendations to repeal these latter sections requires the repeal of section 20 as well.

We recommend, therefore, the repeal of section 20 of the *Libel and Slander Act*.

L. Sections 12 and 13 of the *Libel and Slander Act*

Sections 12 and 13 are ancillary to other provisions in the Act, and they will perform the same functions in our proposed legislation.

We recommend, therefore, that sections 12 and 13 of the *Libel and Slander Act* should be included in the new *Defamation Act*, as sections 20 and 3, respectively, with such amendments as are required to make them consistent with other provisions of the new Act.

CHAPTER XI

REMEDIES

A. Introduction

The standard remedy in a successful action for libel or slander is an award of damages. Both compensatory and punitive damages may be awarded.[230] The law's reliance on an award of damages to vindicate the plaintiff's reputation has been frequently criticized.[231] According to Professor Fleming:[232]

> The preoccupation of our law of defamation with damages has been a crippling experience over the centuries. The damages remedy is not only singularly inept for dealing with, but actually exacerbates, the tension between protection of reputation and freedom of expression, both equally important values in a civilized and democratic community.

In spite of these criticisms, most recent studies have concluded that the damages remedy is in many cases the only effective remedy, and must be retained.[233] At the same time, these studies have recognized the value of other remedies, such as apology, retraction, declaration and reply, and have recommended that the law encourage the use of these alternatives in appropriate cases.[234]

We have not been able to undertake a complete review of this complicated and important topic. We limited our discussions and recommendations to the problems that merit immediate attention within the general framework of the existing law.

We recommend further study of remedies for defamation.

B. Section 11 of the *Libel and Slander Act*

Section 11 of the *Libel and Slander Act* provides:

> **11.** At the trial of an action for a libel contained in a newspaper or other periodical publication or in a broadcast, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered, or has brought action for, damages, or has received or agreed to receive compensation in respect of a libel to the same purport or effect as the libel for which the action has been brought.

This provision, it should be noted, applies where the action is for a *different* libel from that covered by the previous damage award or compensation. The general rule is that each publication is a separate cause of action.[235] Where, unlike the situation envisaged in section 11, several persons have participated in the *same* libel,[236] and the plaintiff settles with one or more and then proceeds to judgment against the others, the rule in *Lawson* v. *Burns*[237] applies: the amount received in the settlement is to be deducted from the amount of the judgment. The rule in section 11 also does not apply where judgment is obtained against two or more defendants responsible for the same libel. Here the general rule of section 4 of the *Negligence Act*[238] governs: the defendants are jointly and severally liable to the plaintiff, but as between themselves they have rights of contribution and indemnity.

---

[230] *See, e.g., McElroy* v. *Cowper-Smith and Woodman*, [1967] S.C.R. 425; *Vogel* v. *C.B.C.*, [1982] 3 W.W.R. 97 (B.C.S.C.).

[231] *See, e.g., Saskatchewan Report*, at 133-140; American Law Institute, 3 *Restatement, Torts, 2d* 326, "Special Note on Remedies for Defamation other than Damages."

[232] Fleming, "Retraction and Reply: Alternative Remedies for Defamation" (1978), 12 U.B.C. L. Rev. 15, at 15.

[233] *See, e.g., Unfair Publication*, paras. 251-275; *New Zealand Report*, paras. 365-411; *Saskatchewan Report* at 133-140; *Faulks Report*, paras. 346-384.

[234] *Ibid.*

[235] *See Gatley*, para. 261.

[236] *See, e.g., Thomson* v. *Lambert*, [1938] S.C.R. 253, holding that the publisher, distributor and vendor of a newspaper participate in only one libel, and that there is only one cause of action.

[237] [1976] 6 W.W.R. 362 (B.C.S.C.).

[238] R.S.B.C. 1979, c. 298.

We believe that section 11 is a valuable rule, but we see no reason why it should be confined to "a libel contained in a newspaper or other periodical publication or in a broadcast." The rule should apply to all defamation actions, as it does under legislation in the United Kingdom.[239]

We recommend, therefore, that section 11 of the *Libel and Slander Act* be amended to make it apply to all defamation actions. The new section in the proposed *Defamation Act* should be in the following terms:

> **16.** At the trial of an action for defamation, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought action for, damages, or has received or agreed to receive compensation in respect of a defamation to the same purport or effect as the defamation for which the action is brought.

C. Sections 15 and 16 of the *Libel and Slander Act*

Sections 15 and 16 of the Act provide for the consolidation of separate actions for the same or similar defamations. The basic principle behind these sections is sound. Consolidation of actions will frequently be in the interests of the efficient administration of justice; the judicial system, litigants, witnesses and lawyers will save time and money by avoiding multiple suits. We were unable to reach a consensus on what changes, if any, should be made in these provisions, and we believe that further study is required. In particular, we have identified three issues that should be addressed in any re-examination of these provisions:

(i) Should the sections deal more directly with the trial of actions at the same time?

(ii) Should plaintiffs as well as defendants be entitled to make application under these provisions?

(iii) What is the effect of these provisions on the ordinary rules of joint and several liability?

We recommend, therefore, that further study of sections 15 and 16 of the *Libel and Slander Act* be undertaken to deal with the issues enumerated above, and that in the meantime these provisions be retained in the proposed new *Defamation Act* in their present form, except for the elimination of the word "libel."

D. Punitive Damages

In England the rule is that in assessing punitive damages in actions involving several defendants the amount awarded should not exceed the amount appropriate as against the *least* culpable defendant.[240] The rule is based on rulings in the House of Lords decision in v. *Cassell & Co. Ltd.* v. *Broome*.[241] We do not think the rule should be adopted in Canada. By its very nature an award of punitive damages is designed to *punish* an individual for *that individual's* behaviour. Canadian law on punitive damages is in many respects different from that applied in England.[242] We agree with the criticisms of the English rule by Esson J. in *Vogel* v. *C.B.C.*[243] Since there is very little authority on the point we believe that a statutory rule should be enacted to remove any doubt on the matter. The rule should require separate awards of punitive damages against each defendant who merits punishment; the quantum should be based on the culpability of that defendant.

---

[239] *Defamation Act, 1952*, s. 12. *See Gatley*, paras. 1444-1447 for the common law background to this rule and the English and Canadian cases applying the statutory rule.

[240] *Gatley*, para. 1465.

[241] [1972] A.C. 1027 (H.L.).

[242] *See generally*, Linden, *Canadian Tort Law*; 51-55 (3rd ed. 1982); Atrens, "Intentional Interference with the Person", in Linden, ed., *Studies in Canadian Tort Law* 378, at 408-14, (1968).

[243] [1982] 3 W.W.R. 97 at 168-172 (B.C.S.C.).

We recommend, therefore that the law governing the manner of awarding and assessing punitive damages in actions involving more than one defendant be clarified by including the following provision in the proposed *Defamation Act*:

> **22.** Where in an action for defamation two or more defendants are found liable for the defamation, if the judge or the jury in assessing damages determine that in addition to compensatory damages punitive damages should also be awarded, then the judge or jury in assessing the amount of punitive damages, if any, may make a separate award against each defendant based on the culpability of each defendant, if any; and, except where one defendant is vicariously liable for the tort committed by another, liability to pay punitive damages awarded shall not be joint, and section 4 of the *Negligence Act* shall not apply to such award.

E. Supreme Court Rule 37(25)

Supreme Court Rule 37(25) provides:

> A plaintiff in an action for libel or slander who takes money out of court may apply to the court for leave to make in open court a statement in terms approved by the court.

The English rule, Order 82, Rule 5, is broader, as it permits both the plaintiff and defendant to make a statement, and it permits the statement to be made even if the settlement does not involve money paid into court. Our rule only permits the statement where the plaintiff takes money paid into court by the defendant in the course of an action. We believe that our rule should be similarly broadened. The procedure we propose permits the making of statements under the protection of absolute privilege that attaches to any proceedings in court, but subject to safeguards against abuse by requiring judicial approval of the statement. Since it is only the judicially approved statement that should be protected by absolute privilege, we have provided for a ban on publication of what is said during the application for judicial approval to protect against abuse of the proceedings. Since the rule applies only to defamation actions, we believe that the rule should be removed from the Rules of Court and placed in the defamation statute.

We recommend, therefore, that Supreme Court Rule 37(25) should be repealed and replaced by the following provision in the proposed *Defamation Act*:

> **23.** (1) In an action for defamation where the plaintiff takes money out of court, or otherwise accepts a settlement of the action before trial the plaintiff or defendant may apply to the court for leave to make in open court a statement in such terms proposed by either party as may be approved by the court.
>
> (2) Where an application is made under subsection (1), the judge shall, at the request of either party, order that no part of the proceedings on that application, other than the statement approved by the court, shall be published.

F. Apologies and Retractions

We believe that the law governing apologies, retractions, and other alternatives to the damages remedy requires further consideration. Although apologies and retractions are not always an adequate substitute for an action for damages, there are many cases where they will provide a particularly effective and speedy form of redress. The law should encourage such alternatives to litigation.

In clear cases, a plaintiff may now be able to get effective and speedy relief by making application for summary judgment or trial under Supreme Court Rules 18 and 18A. In such cases the availability and increasing use of these procedures can only encourage apology and retraction.

Even if more thorough review of the subject of remedies is undertaken, changes should be made immediately to modernize and simplify the apology rules of sections 6 and 10. Section 6 introduces unnecessary, and confusing technical refinements.[244] It should not be limited to the media; furthermore we see no reason why special mention should be made of two other mitigating factors, absence of malice and gross negligence, as these along with many other factors would in any event be relevant to mitigation at common law. The restrictions of section 10 are irrational, and another example of archaic technicalities that should be abolished.

We recommend, therefore that sections 6 and 10 of the *Libel and Slander Act* be repealed and replaced by the following provision in the proposed *Defamation Act*:

> **17.** (1) In an action for defamation the defendant may plead or adduce evidence in mitigation of damages that he made or offered to make an apology or retraction at an appropriate time, and in an appropriate manner.
>
> (2) In an action for defamation the plaintiff may plead or adduce evidence in aggravation of damages that the defendant refused or failed to make an apology or retraction at an appropriate time and in an appropriate manner.

G. Unintentional Defamation and Offers of Amends

We considered the question of whether we should introduce into our law a provision similar to section 4 of the United Kingdom *Defamation Act, 1952*. The section provides for an offer of amends as a remedy for defamation published "innocently." Subsection 4(5) states that for the purposes of the section a publication is innocent

> only if the following conditions are satisfied, that is to say
>
> (a) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
>
> (b) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,
>
> and in either case that the publisher exercised all reasonable care in relation to the publication . . .

We do not consider it necessary to examine the complicated offer of amends procedure established by section 4, which has not proved effective in the United Kingdom.[245] Cases of unintentional defamation of the type covered by the section 4 procedure are rare.[246] We are not aware of any problems in this province requiring new legislation. The unintentional defamer in some cases will be protected by section 7 of our Act. Although this complex provision does not provide an ideal solution, it should be retained until this area of the law is subjected to more thorough review.

We recommend that there should not be new legislation dealing with the issue of unintentional defamation, and that, pending a review of this area of the law, section 7 of the *Libel and Slander Act* should be retained in a new *Defamation Act*.

---

[244] For an example of some of the problems of interpretation *see Tait* v. *New Westminster Radio Ltd.*, (1984) 58 B.C.L.R. 194 (C.A.).

[245] The defects in the s. 4 procedure are summarized in the *Faulks Report*, paras. 281-284; changes were recommended in paras. 285-288. The offer of amends procedure was criticized and rejected in *Unfair Publication*, paras. 85-88.

[246] *See* note 13, *supra*, for examples.

CHAPTER XII CONCLUSION

We have not attempted a complete review of the law of defamation or a codification of the law. Much work remains to be done on the law of defamation. We have studied what we believe are some of the major procedural and substantive problems requiring prompt attention through legislative action. For convenience we have consolidated our recommendations for legislation in the Draft *Defamation Act* in Appendix A.

The recommendations that we have made are designed to maintain a proper balance between protection of reputation and freedom of speech. Our proposals are also designed to modernize and simplify the law, for the benefit of the media, the legal profession and the public.

We wish to express our appreciation to the Law Reform Commission for the opportunity we have had to inquire into this most important and interesting area of the law.

APPENDICES

Appendix A

DRAFT DEFAMATION ACT

[NOTE: for convenience each section is followed by a brief indication of the source of the section, and the Chapter and heading numbers of the portion of the Report where the section is discussed.]

Interpretation

1. In this Act

"broadcasting" means the dissemination of writing, signs, signals, pictures, sounds or intelligence of any nature intended for direct reception by, or which is available on subscription to, the general public

(a) by means of a device utilizing electromagnetic waves of frequencies lower than 3,000 GHz propagated in space without artificial guide, or

(b) through a community antenna television system operated by a person licensed under the *Broadcasting Act* (Canada) to carry on a broadcasting receiving undertaking;

and "broadcast" has a corresponding meaning.

[Unchanged from 1985 amendment. Chapter VI.]

"defamation" means libel or slander;

[New. Chapter V.B.]

"public media" means a public newspaper or other periodical publication or a broadcast;

[New. Chapter VI];

"public meeting" means a meeting genuinely and lawfully held for a public purpose, and for the furtherance on discussion of a matter of public concerns, whether the admission to it is general or restricted;

[Unchanged. Chapter VI.]

"public newspaper or other periodical publication" includes a paper containing public news, intelligence or occurrences, or any remarks or observations in it printed for sale and published periodically, or in parts or numbers at intervals not exceeding 31 days between the publication of any 2 papers, parts or numbers; and also a paper printed in order to be dispersed and made public weekly or more often, or at intervals not exceeding 31 days, and containing only, or principally, advertisements;

[Unchanged. Chapter VI.]

Defamation actionable without proof of damages

2. An action lies for defamation and in an action for defamation where defamation is proved, damages shall be presumed.

[New. Chapter V.]

Allegations in defamation actions

3. In an action for defamation the plaintiff may allege that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory allegation to show how the words or matter were used in that sense, and the allegation shall be put in issue by the denial of the alleged defamation; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient.

[Existing s. 13, unchanged except for substitution of "defamation" for "libel and slander." Section 13 is not discussed in the Report.]

Defendant may pay money into court

4. A defendant may with his defence pay into court money by way of amends for the injury sustained by the publication of the defamation, and the payment is of the same effect, and available to the same extent and in the same manner, and is subject to the same rules and regulations as to costs, and the form of pleading, except as far as regards the additional facts in the Act required to be pleaded by the defendant, as payment of money into court in other cases; and to that defence the plaintiff may reply generally, denying the whole of it.

[Section 9 of present Act, unchanged except for substitution of "defamation" for "libel" and "his defence" for "that defence" in the first line. Section 9 is not discussed in the Report.]

Public media reports of court proceedings privileged

5. A fair and accurate report in the public media of proceedings publicly heard before a Canadian court exercising judicial authority if published contemporaneously with the proceedings, is privileged.

[Present subsection 3(1) amended. Present s. 3(2) is replaced by new s. 24. Chapter VIII.B.]

Reports and statements privileged without explanation or contradiction

6. Subject to section 8, the publication in the public media of any such report or other matter as is listed herein shall be privileged unless it is proved that the report or other matter was published or made maliciously:

- (a) A fair and accurate report of any proceedings in public of the Parliament of Canada, or the legislature of any Province or Territory, or of a committee of any of them, or of the Parliament at Westminster or the legislature of any other Commonwealth country or constituent legislative part thereof, or of the Congress of the United States of America or the legislature of any of its States or Territories.
- (b) (i) A fair and accurate report of any proceedings in public of any international organization of which Canada or British Columbia is a member, or of any international conference to which the government of Canada or British Columbia sends a representative, or a public statement or report of any such organization.
  - (ii) A fair and accurate report of any proceedings of any international organization or agency carrying out functions under the United Nations Organization or a public statement or report of any such organization or agency.
- (c) A fair and accurate report of any proceedings in public of an international court.
- (d) A fair and accurate report of any proceedings in public before:
  - (i) a court exercising judicial functions in Canada in so far as such report is not contemporaneous with the proceedings reported;

(ii) a court exercising judicial functions in the United Kingdom or any other Commonwealth country or in the United States of America;

(iii) a Canadian court martial held within or outside Canada.

(e) A fair and accurate copy of, or extract from, any register kept in pursuance of any Act of Parliament or of the legislature of any province or territory which is open to inspection by the public, or of any other document which is required by an enactment of Canada or of any province or territory to be open to inspection by the public.

(f) A fair and accurate report of:

(i) a document published by order or under the authority of the Senate or House of Commons, the legislature of any province or territory, or the speaker thereof, or by the government of Canada or any province or territory;

(ii) a document published by or under the authority of the government or legislature of the United Kingdom or any other Commonwealth country or constituent legislative part thereof or of the United States of America or any state or territory thereof.

(g) A notice or advertisement published by or on the authority of any court in Canada.

(h) A notice or advertisement published in Canada by or on the authority of a duly constituted court in the United Kingdom or any other Commonwealth country or any foreign state which is recognized by Canada.

[Replacing existing s. 4. Chapter VIII.D.]

Reports and statements privileged subject to explanation or contradiction

7. (1) Subject to section 8, and subsection (2), the publication in the public media of any such report or other matter as is mentioned in subsection (3) shall be privileged unless it is proved that the report or other matter was published or made maliciously.

(2) A privilege created or confirmed by this section shall not be a defence to an action for defamation if it is proved that the defendant has been requested by the plaintiff to insert in the newspaper or other periodical publication, or to broadcast in the same manner as that in which the report or other matter complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other matter and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) This section applies to the following publications:

(a) A letter or statement by way of explanation or contradiction published in compliance with subsection (2).

(b) A fair and accurate report of the findings, or decision of any of the following associations, or of any committee or governing body thereof:

(i) an association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

(ii) an association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(iii) an association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;

(iv) an association formed in Canada for the purpose of promoting a charitable object or other objects beneficial to the community and empowered to exercise control over or to adjudicate on matters of interest or concern to the association or the actions or conduct of any person subject to such control or adjudication,

being a finding or decision relating to a person who is a member of or is subject by statute or common law or by virtue of any contract to the control of the association.

(c) A fair and accurate report of the proceedings of any public meeting held in Canada.

(d) A fair and accurate report of the proceedings at any meeting or sitting of:

(i) any municipal council, school board or other local authority, or any committee thereof in any part of Canada;

(ii) any commission, tribunal, committee or person appointed for the purpose of any inquiry by or under any Act of Parliament or of the legislature of any province or territory;

(iii) any tribunal, board, committee or body constituted by or under, or exercising functions under, an Act of Parliament or of the legislature of any Province or Territory;

not being a meeting or sitting admission to which is denied to representatives of the public media and to other members of the public, and of any public statement, report, decision or other adjudication of any such body.

(e) (i) A fair and accurate report of the proceedings at a general meeting in Canada of any corporation or association constituted, registered or certified by or under any Act of Parliament or of the legislature of any Province or Territory, or incorporated by Royal Charter, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.

(ii) A fair and accurate report of any report or other document circulated to stockholders, shareholders or members by or with the authority of the board of any corporation or association constituted, registered or certified as aforesaid, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.

(iii) A fair and accurate report of any document relating to the appointment, resignation, retirement or dismissal of directors or officers, circulated to stockholders, shareholders or members of any corporation or association constituted, registered or certified as aforesaid, not being a private or non-reporting company within the meaning of the Act under which it is incorporated.

(iv) A fair and accurate report of any document circulated by the auditors to stockholders, shareholders and members of any corporation or association, constituted, registered or certified as aforesaid, not being a private or non-reporting company.

(f) A fair and accurate report of any finding, decision, or notice issued by:

(i) An ombudsman, or officer exercising similar functions, appointed under the law of Canada or of any province or territory;

(ii) A press council in Canada;

(iii) A judicial council in Canada;

(iv) A person or board authorized by law or by the parties to arbitrate or mediate any labour dispute between the parties in Canada.

(g) Any information made available officially from court documents in criminal cases in Canada to which the public has a right of access.

(h) A fair and accurate report of any official notice or other matter (including photographs, sketches, or other pictorial representations) issued for the information of the public by, or on behalf of, any Canadian federal, provincial or territorial government department or officer of state, or by any public or local authority or police force in Canada.

(i) (i) A fair and accurate report of any proceedings in public before a foreign court duly constituted by the *de facto* or effective government of the state in which such court exercises jurisdiction.

(ii) A fair and accurate report of any proceedings in public of the legislature of any foreign state recognized by Canada.

(iii) A fair and accurate report of any publication issued under the authority of a government or legislature of a foreign state recognized by Canada.

(j) Any report or other matter not mentioned in section 6 that would be privileged by virtue of the common law.

[Replacing present s. 4. Chapter VIII.D.]

Publication of public concern and public benefit

8. Sections 6 and 7 do not protect the publication of matter not of public concern and the publication of which is not for the public benefit.

[Present s. 4(3), in part. Chapter VIII.D.]

Defence of fair comment not defeated by allegations of dishonourable, corrupt, base or sordid motives

9. The defence of fair comment in an action for defamation shall not be limited or otherwise affected by reason only of the fact that dishonourable, corrupt, base or sordid motives have been attributed to the plaintiff.

[New. Chapter IX.E.]

Factual foundation for the defence of fair comment

10. In an action for defamation in respect of words including or consisting of expression of opinion, a defence of fair comment shall not fail by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation therefor.

[New. Chapter IX.F.]

Defence of fair comment for publication of another's opinion

11. (1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if

(a) the defendant did not know that the person expressing the opinion did not hold the opinion;
(b) a person could honestly hold the opinion; and
(c) the person expressing the opinion was correctly identified by name and address in the publication, provided that the defence shall not fail by reason only that the person was not correctly identified if the defendant took reasonable care to verify the identity of the person expressing the opinion.

(2) For the purposes of this section, the defendant is not under a duty to enquire into whether the person expressing the opinion does or does not hold the opinion.

[New. Chapter IX.G.]

Rolled-up plea abolished

12. The plea known as the rolled-up plea is hereby abolished.

[New, replacing Supreme Court Rule 19(12). Chapter IX.H.]

Jury not to be directed to return a verdict on mere proof of publication and sense ascribed

13. On the trial of an action for defamation

(a) jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action;
(b) the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and
(c) the jury may on such issue find a special verdict, if they think fit so to do,

and the proceedings after verdict, whether general or special, shall be the same as in other cases.

[Replacement for s. 14 of present Act, identical to s. 6 of the *Uniform Defamation Act*. Chapter X.G.]

Consolidation of Actions

14. The Supreme Court, on an application by or on behalf of 2 or more defendants in actions in respect of the same, or substantially the same, defamation brought by the same person, may make an order for the consolidation of the actions, so that they are tried together; and after the order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamation are also entitled to be joined in a common action, on a joint application being made by the new defendants and the defendants in the actions already consolidated.

[Section 15 of the present Act, unchanged except for deletion of "libel." Chapter XI.C.]

Verdict, assessment of damages and apportionment of costs in consolidated actions

15. In a consolidated action under section 14, the court or jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant, in the same way as if the actions consolidated had been tried separately; and if the court or jury finds a verdict against the defendant or defendants in more than one of the actions consolidated, they shall proceed to apportion the amount of damages which they have found between and against the last mentioned defendants; and the court at the trial, if it awards to the plaintiff the costs of the action, shall make an order it thinks just for the apportionment of costs between and against the defendants.

[Section 16 of existing Act, unchanged, except for changing the reference to old s. 13 to new s. 14. Chapter XI.C.]

Mitigation of damages where plaintiff was previously compensated

16. At the trial of an action for defamation, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered or has brought action for, damages, or has received or agreed to receive compensation in respect of a defamation to the same purport or effect as the defamation for which the action is brought.

[Section 11 of the existing Act, amended. Chapter XI.B.]

Mitigation or aggravation of damages for making or refusing apology

17. (1) In an action for defamation the defendant may plead or adduce evidence in mitigation of damages that he made or offered to make an apology or retraction at an appropriate time, and in an appropriate manner.

[New, replacing ss. 6 and 10. Chapter XI.F.]

(2) In an action for defamation the plaintiff may plead or adduce evidence in aggravation of damages that the defendant refused or failed to make an apology or retraction at an appropriate time and in an appropriate manner.

[New. Chapter XI.F.]

Recovery of actual damages only in certain cases

18. In an action the plaintiff shall recover actual damages only if it appears on the trial of the action that the matter was published in good faith, and that there was reasonable ground to believe that it was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retraction of a statement in it alleged to be erroneous was published either in the next regular issue of the newspaper or other periodical publication aforesaid, or in any regular issue of it published within 3 days after the service of the writ, and was published in as conspicuous a place and type as was the matter complained of or, if the alleged defamation was broadcast, the retraction was broadcast within a reasonable time and at the latest, 3 days after service of the writ and was broadcast as widely and as often as was the alleged defamation, and a transcript of the retraction broadcast was delivered or mailed by registered letter addressed to the plaintiff within that period.

[Existing s. 7, unchanged except for substitution of "matter" for "article" and "defamation" for "libel."]

Defamation of candidates for election

19. Sections 17 and 18 do not apply to the case of defamation of a candidate, whether at a parliamentary or a municipal election, unless a full and fair retraction of the statement alleged to be erroneous is made, in the case of

(a) a publication, editorially in a conspicuous manner; or

(b) a broadcast, editorially as widely and as often as the alleged defamation was broadcast, and a transcript of the retraction is delivered or mailed by registered letter addressed to the candidate

at least 5 days before the election.

[Existing s. 8, unchanged except for the substitution of "defamation of" for "libel against", and changing reference to old ss. 5, 6 and 7 to new ss. 17 and 18. The Report does not deal with s. 8 of the existing Act.]

Publication of name of publisher

20. (1) The proprietor or publisher of a newspaper or other periodical publication is not entitled to the benefit of sections 16, 17, 18 or 19 unless his name and the address of publication are stated either at the head of the editorials or on the front page of the newspaper.

(2) The production of a printed copy of a newspaper is proof, in the absence of evidence to the contrary, of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that defamation against him has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 16, 17, 18 or 19 do not apply with respect to an action by that person against the owner or operator for the alleged defamation unless the person whose name and address are requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within 10 days from the date on which the first mentioned registered letter is received at the broadcasting station.

[Present s. 12, unchanged except for substitution of "defamation" for "libel" and "sections 16, 17, 18 or 19" for "sections 5, 6, 7, 8 or 11". Present s. 12 is not discussed in the Report.]

Access to broadcast recording by person defamed

21. (1) Where a person has reason to believe that he has been defamed in a broadcast, he may by a demand in writing delivered to the owner or operator of the broadcast station within four weeks of the broadcast, require the broadcaster to permit him to hear or view a tape of the broadcast and receive a copy of the tape.

(2) Where a demand is received under subsection (1) the broadcaster shall within 48 hours, upon the tender of a reasonable fee by the person making the demand, permit the person making the demand to hear or see the tape, and provide him with a true copy thereof.

[New. Chapter X.A.]

Separate assessment of punitive damages

22. Where in an action for defamation two or more defendants are found liable for the defamation, if the judge or the jury in assessing damages determine that in addition to compensatory damages punitive damages should also be awarded, then the judge or jury in assessing the amount of punitive damages, if any, may make a separate award against each defendant based on the culpability of each defendant, if any; and, except where one defendant is vicariously liable for the tort committed by another, liability to pay punitive damages awarded shall not be joint, and section 4 of the *Negligence Act* shall not apply to such award.

[New. Chapter XI.D.]

Statement in court after settlement

23. (1) In an action for defamation where the plaintiff takes money out of court, or otherwise accepts a settlement of the action before trial the plaintiff or defendant may apply to the court for leave to make in open court a statement in such terms proposed by either party as may be approved by the court.

(2) Where an application is made under subsection (1), the judge shall, at the request of either party, order that no part of the proceedings on that application, other than the statement approved by the court, shall be published.

[New. Replacing Supreme Court Rule 37(25). Chapter XI.E.]

No criminal publication authorized

24. Nothing in this Act authorizes the publication of any matter prohibited by the criminal law of Canada.

[New, replacing present s. 3(2). Chapter VIII.B. and D.]

Appendix B

LIBEL AND SLANDER ACT

R.S.B.C. 1979, c. 234

Interpretation

1. In this Act

"broadcasting" means the dissemination of writing, signs, signals, pictures, sounds or intelligence of any nature intened for direct reception by, or which is available on subscription to, the general public;

(a) by means of a device utilizing electromagnetic waves of frequencies lower than 3000 GHz propagated in space without artificial guide, or

(b) through a community antenna television system operated by a person licensed under the *Broadcasting Act* (Canada) to carry on a broadcasting receiving undertaking,

and "broadcast" has a corresponding meaning.

"public meeting" means a meeting genuinely and lawfully held for a public purpose, and for the furtherance or discussion of a matter of public concern, whether the admission to it is general or restricted;

"public newspaper or other periodical publication" includes a paper containing public news, intelligence or occurrences, or any remarks or observations in it printed for sale and published periodically, or in parts or numbers at intervals not exceeding 31 days between the publication of any 2 papers, parts or numbers; and also a paper printed in order to be dispersed and made public weekly or more often, or at intervals not exceeding 31 days, and containing only, or principally,

Defamation in broadcast

2. Defamatory words in a broadcast are deemed to be published and to constitute libel.

Newspaper reports of proceedings in court privileged

3. (1) A fair and accurate report in a public newspaper or other periodical publication or in a broadcast of proceedings publicly heard before a court exercising judicial authority if published contemporaneously with the proceedings, is privileged.

(2) This section does not authorize the publication of blasphemous or indecent matter.

Newspaper reports of public meetings and proceedings, and publication of official reports privileged

4. (1) A fair and accurate report published in a public newspaper or other periodical publication or in a broadcast of the proceedings of a public meeting, or, except where neither the public nor a news reporter is admitted, of a meeting of a municipal council, school board, board or local authority formed or constituted under any Act, or of a committee appointed by any of the above mentioned bodies, or of a meeting of commissioners authorized to act by letters patent, Act or other lawful warrant or authority, or select committees of the Legislative Assembly, and the publication at the request of a government office or ministry, or a public officer, of a notice or report issued for the information of the public, is privileged, unless it is proved that the report or publication was published or made maliciously.

(2) This section does not authorize the publication of blasphemous or indecent matter; and the protection intended to be afforded by this section is not available as a defence in proceedings if it is proved that the defendant has been requested to insert in the newspaper or other periodical publication, or to broadcast in the same manner as that, in which the report or other publication complained of appeared, a reasonable letter or statement by way of contradiction or explanation of the report or other publication and has refused or neglected to insert it.

(3) This section does not limit or abridge a privilege now existing by law, or protect the publication of matter not of public concern and the publication of which is not for the public benefit.

One clear day must elapse between the cause of action and issue of writ

5. In an action for libel contained in a public newspaper or other periodical publication or in a broadcast, one clear day must be allowed to elapse between the cause of action complained of and the issue of the writ on the libel.

Defendant may plead that libel was inserted without malice or gross negligence, and that he offered to publish an apology

6. (1) In an action for libel in a newspaper or other periodical publication the defendant may plead in mitigation of damages that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication a full apology for the libel; or if the newspaper or periodical publication in which the libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish the apology in a newspaper or periodical publication to be selected by the plaintiff in the action.

(2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he broadcast a full apology for the libel.

Recovery of actual damages only in certain cases

7. In an action the plaintiff shall recover actual damages only if it appears on the trial of the action that the article was published in good faith, and that there was reasonable ground to believe that it was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retraction of a statement in it alleged to be erroneous was published either in the next regular issue of the newspaper or other periodical publication aforesaid, or in any regular issue of it published within 3 days after the service of the writ, and was published in as conspicuous a place and type as was the article complained of or, if the alleged libel was broadcast, the retraction was broadcast within a reasonable time and at the latest, 3 days after service of the writ and was broadcast as widely and as often as was the alleged libel, and a transcript of the retraction broadcast was delivered or mailed by registered letter addressed to the plaintiff within that period.

Application of Act to case of libel of candidate for election

8. Sections 5, 6 and 7 do not apply to the case of libel against a candidate, whether at a parliamentary or a municipal election, unless a full and fair retraction of the statement alleged to be erroneous is made, in the case of

(a) a publication, editorially in a conspicuous manner; or

(b) a broadcast, editorially as widely and as often as the alleged libel was broadcast, and a transcript of the retraction is delivered or mailed by registered letter addressed to the candidate

at least 5 days before the election.

Defendant may pay money into court

9. A defendant may with that defence pay into court money by way of amends for the injury sustained by the publication of the libel, and the payment is of the same effect, and available to the same extent and in the same manner, and is subject to the same rules and regulations as to costs, and the form of pleading, except as far as regards the additional facts in the Act required to be pleaded by the defendant, as payment of money into court in other cases; and to that defence the plaintiff may reply generally, denying the whole of it.

Defendant may prove in mitigation that he offered a written apology

10. In an action for defamation where the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on proceedings in lieu of demurrer, or by admission, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for the defamation before the commencement of the action; or in case the action was commenced before there was an opportunity of making or offering the apology, that he did so as soon afterwards as he had opportunity.

Evidence in mitigation of damages, of damages recovered in another action, or received by way of compromise

11. At the trial of an action for a libel contained in a newspaper or other periodical publication or in a broadcast, the defendant may give in evidence in mitigation of damages that the plaintiff has already recovered, or has brought action for, damages, or has received or agreed to receive compensation in respect of a libel to the same purport or effect as the libel for which the action has been brought.

Publication of name of publisher

12. (1) The proprietor or publisher of a newspaper or other periodical publication is not entitled to the benefit of section 5, 6, 7, 8 or 11 unless his name and the address of publication are stated either at the head of the editorials or on the front page of the newspaper.

(2) The production of a printed copy of a newspaper is proof, in the absence of evidence to the contrary, of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that libel against him has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, section 5, 6, 7, 8 or 11 do not apply with respect to an action by that person against the owner or operator for the alleged libel unless the person whose name and address are requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within 10 days from the date on which the first mentioned registered letter is received at the broadcasting station.

Allegations in libel and slander actions

13. In actions of libel and slander the plaintiff may allege that the words or matter complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory allegation to show how the words or matter were used in that sense, and the allegation shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient.

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed

14. On the trial of an action for making or publishing a libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty on the whole matter put in issue in the action, and shall not be required or directed by the court before which the action is tried to find the defendant guilty merely on the proof of publication by the defendant of the paper charged to be a libel, and of the sense ascribed to it in the action; but the court before which the trial is had shall, according to the discretion of the court, give the opinion and directions of the court to the jury on the matter in issue, as in other cases; and the jury may on the issue find a special verdict, if they think fit to do so, and the defendant, if found guilty, may move in arrest of judgment on the grounds and in a manner he might have done before the passing of the Act.

Consolidation of actions

15. The Supreme Court, on an application by or on behalf of 2 or more defendants in actions in respect of the same, or substantially the same, libel or defamation brought by the same person, may make an order for the consolidation of the actions, so that they are tried together; and after the order has been made, and before the trial of the actions, the defendants in any new actions instituted in respect of the same, or substantially the same, libel or defamation are also entitled to be joined in a common action, on a joint application being made by the new defendants and the defendants in the actions already consolidated.

Verdict, assessment of damages and apportionment of costs in consolidated actions

16. In a consolidated action under section 15, the court or jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant, in the same way as if the actions consolidated had been tried separately; and if the court or jury finds a verdict against the defendant or defendants in more than one of the actions consolidated, they shall proceed to apportion the amount of damages which they have found between and against the last mentioned defendants; and the court at the trial, if it awards to the plaintiff the costs of the action, shall make an order it thinks just for the apportionment of costs between and against the defendants.

Obscene matter need not be set forth in pleadings

17. It is not necessary in an action for libel to set out in the pleading or process obscene passages, but it is sufficient to deposit in the proper registry the book, newspaper or other document containing the alleged libel, together with particulars showing precisely by reference to pages, columns and lines where the alleged libel is to be found, and the particulars form part of the record, and all proceedings may be taken on them as though the passages complained of had been set out in pleading or process.

Where action shall be tried

18. (1) Every action for libel contained in a public newspaper or other periodical publication when the chief office of the newspaper or other periodical publication is in British Columbia shall be tried in the county where the chief office of the newspaper or periodical is, or in the county where the plaintiff resides at the time the action is brought.

(2) On the application of either party the court may direct the issues to be tried or the damages to be assessed in another county if it appears to be in the interests of justice, or that it will promote a fair trial, and may impose terms as to payment of witness fees and otherwise as seem proper.

Security for costs

19. (1) In an action brought for libel in a public newspaper or periodical publication the defendant may, at any time after the filing of the statement of claim, apply to the court for security for costs, on notice and an affidavit by the defendant or his agent, showing the nature of the action, the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a verdict or judgment be given in favour of the defendant, that the defendant has a good defence on the merits, that the statements complained of were published in good faith, and that the grounds of action are trivial or frivolous.

(2) The court may order that the plaintiff give security for the costs to be incurred in the action, and the security ordered shall be given in accordance with the practice in cases where the plaintiff resides out of the Province, and the order is a stay of proceedings until the proper security is given.

(3) Where the alleged libel involves a criminal charge, the defendant is not entitled to security for costs under this Act unless he satisfies the court that the action is trivial or frivolous or that the circumstances which, under sections 5, 6, 7 and 8 entitle the defendant at the trial to have the damages

restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge.

(4) For the purposes of this section, the plaintiff or the defendant or their agents, may be examined on oath at any time after the statement of claim has been filed.

Application of ss. 17 to 19 to broadcast libel

20. Sections 17, 18 and 19 apply, with the necessary modifications, to an action for libel in a broadcast.

Uniform Defamation Act

(1962 Consolidation, page 79)
(Amended 1979*)*

1. In this Act

Interpretation

(a) "broadcasting" means the dissemination of any form of radioelectric communication, including radiotelegraph, radiotelephone and the wireless transmission of writing, signs, signals, pictures and sounds of all kinds by means of Hertzian waves;

(b) "defamation" means libel or slander;

(c) "newspaper" means a paper,

  (i) containing news, intelligence, occurrences, pictures or illustrations, or remarks or observations thereon,

  (ii) printed for sale, and

  (iii) published periodically, or in parts or numbers, at intervals not exceeding thirty-one days between the publication of any two of such papers, parts or numbers;

(d) "public meeting" means a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto is general or restricted.

Presumption of damage

2. An action lies for defamation and in an action for defamation where defamation is proved, damage shall be presumed.

Allegations of plaintiff

3. In an action for defamation the plaintiff may allege that the matter complained of was used in a defamatory sense, specifying the defamatory sense without alleging how the matter was used in that sense, and the pleading shall be put in issue by the denial of the alleged defamation; and where the matters set forth, with or without the alleged meaning, shows a cause of action, the pleading is sufficient.

Apology in mitigation of damages

4. In an action for defamation in which

(a) the defendant has pleaded a denial of the alleged defamation only; or

(b) the defendant has suffered judgment by default; or

(c) judgment has been given against the defendant on motion for judgment on the pleadings,

he may give in evidence in mitigation of damages that he made or offered a written or printed apology to the plaintiff for the defamation

(d) before the commencement of the action; or

(e) if the action was commenced before there was an opportunity of making or offering the apology, as soon afterwards as he had an opportunity.

Payment into court by way of amends

5. The defendant may pay into court with his defence a sum of money by way of amends for the injury sustained by the publication of the defamatory matter, with or without a denial of liability, and the payment has the same effect as payment into court in other cases.

General or special verdict

6. On the trial of an action for defamation

(a) the jury may give a general verdict upon the whole matter in issue in the action, and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged defamation and of the sense ascribed to it in the action;

(b) the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases; and

(c) the jury may on such issue find a special verdict, if the think fit so to do,

and the proceedings after verdict, whether general or special, shall be the same as in other cases.

Consolidation of actions for same defamation

7. Upon an application by two or more defendants in two or more actions brought by the same person for the same or substantially the same defamation, the court may make an order for the consolidation of the actions so that they will be tried together; and after an order has been made, and before the trial of the actions, the defendants in any new actions, instituted in respect of any such defamation are also entitled to be joined in a common action upon a joint application by the new defendants and the defendants in the action already consolidated.

Assessment of damages and apportionment of damages and costs in consolidated action

8. (1) In a consolidated action under section 7 the court or jury shall assess the whole amount of the damages, if any, in one sum,

but a separate verdict shall be given for or against each defendant in the same way as if the actions consolidated had been tried separately.

(2) If the court or jury gives a verdict against defendants in more than one of the actions so consolidated, it shall apportion the amount of the damages between and against those defendants; and, if the plaintiff is awarded the costs of the action, the judge shall make such order as he considers just for the apportionment of the costs between and against those defendants. **Idem**

9. (1) Where the defendant published alleged defamatory matter that is an opinion expressed by another person, a defence of fair comment shall not fail for the reason only that the defendant did not hold the opinion if, **Fair comment**

(a) the defendant did not know that the person expressing the opinion did not hold the the opinion; and

(b) a person could honestly hold the opinion.

(2) For the purpose of this section, the defendant is not under a duty to inquire into whether the person expressing the opinion does or does not hold the opinion. *New, 1979.* **Idem**

10. (1) A fair and accurate report, published in a newspaper or by broadcasting, of a public meeting or, except where neither the public nor any reporter is admitted, of proceedings in **Certain reports and other publications privileged**

(a) the Senate or House of Commons of Canada;

(b) the Legislative Assembly of this province or any other province of Canada;

(c) a committee of any of such bodies;

(d) a meeting of commissioners authorized to act by or pursuant to statute or other lawful warrant or authority; or

(e) a meeting of

  (i) a municipal council,

  (ii) a school board,

  (iii) a board of education,

  (iv) a board of health, or

  (v) any other board or local authority formed or constituted under any public Act of the Parliament of

Canada or the Legislature of this province or any other province of Canada, or of a committee appointed by any such board or local authority,

is privileged, unless it is proved that the publication was made maliciously.

Idem

(2) The publication in a newspaper or by broadcasting, at the request of any Government department, bureau or office or public officer, of any report, bulletin, notice or other document issued for the information of the public is privileged, unless it is proved that the publication was made maliciously.

Exception

(3) Nothing in this section applies to the publication of seditious, blasphemous or indecent matter.

Where subs. (1), (2) do not apply

(4) Subsections (1) and (2) do not apply where,

(a) in the case of publication in a newspaper,

(i) the plaintiff shows that the defendant has been requested to insert in the newspaper a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff, and

(ii) the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting,

(i) the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff, and

(ii) the defendant fails to show that he has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Idem

(5) Nothing in this section limits or abridges any privilege now by law existing, or applies to the publication of any matter

(a) not of public concern; or

(b) the publication of which is not for the public benefit.

Reports of proceedings in court privileged

11. (1) A fair and accurate report, published in a newspaper or by broadcasting, of proceedings publicly heard before any court is absolutely privileged if

(a) the report contains no comment;

(b) the report is published contemporaneously with the proceedings that are the subject-matter of the report, or within thirty days thereafter; and

(c) the report contains nothing of a seditious, blasphemous or indecent nature.

(2) Subsection (1) does not apply where,

Where subs. 1 does not apply

(a) in the case of publication in a newspaper,

(i) the plaintiff shows that the defendant has been requested to insert in the newspapers a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff, and

(ii) the defendant fails to show that he has done so; or

(b) in the case of publication by broadcasting,

(i) the plaintiff shows that the defendant has been requested to broadcast a reasonable statement of explanation or contradiction by or on behalf of the plaintiff, and

(ii) the defendant fails to show that he has done so from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Application of ss. 9 and 10

12. Sections 10 and 11 apply to every headline or caption in a newspaper that relates to any report therein.

Application of ss. 13 to 18

13. Sections 14 to 19 apply only to actions for defamation against

(a) the proprietor or publisher of a newspaper;

(b) the owner or operator of a broadcasting station; or

(c) an officer, servant or employee thereof,

in respect of defamatory matter published in the newspaper or from the broadcasting station.

Notice of action

14. (1) No action lies unless the plaintiff, within three months after the publication of the defamatory matter came to his notice or knowledge, has given to the defendant, in the case of a daily newspaper, seven, and in the case of any other newspaper or where the defamatory matter was broadcast, fourteen days' notice in writing of his intention to bring an action, specifying the defamatory matter complained of.

Service of notice

(2) The notice shall be served in the same matter as a statement of claim.

Limitation of actions

15. An action against

(a) the proprietor or publisher of a newspaper;

(b) the owner or operator of a broadcasting station; or

(c) any officer, servant or employee of the newspaper or broadcasting station,

for defamation contained in the newspaper or broadcast from the station shall be commenced within six months after the publication of the defamatory matter came to the notice or knowledge of the person defamed; but an action brought and maintainable for defamation published within that period may include a claim for any other defamation published against the plaintiff by the defendant in the same newspaper or from the same station within a period of one year before the commencement of the action.

Place of trial

16. The action shall be tried

(a) in the county (*or* judicial district) where the chief office of the newspaper or of the owner or operator of the broadcasting station is situated; or

(b) in the county (*or* judicial district) wherein the plaintiff resides at the time the action is brought,

but, upon the application of either party, the court may,

(c) direct the action to be tried, or the damages to be assessed, in any other county (*or* judicial district) if it appears to to be in the interests of justice; and

(d) impose such terms as to payment of witness fees and otherwise as the court considers proper.

Evidence in mitigation of damages

17. (1) The defendant may prove in mitigation of damages

(a) that the defamatory matter was inserted in the newspaper or was broadcast without actual malice and without gross negligence; and

(b) that before the commencement of the action, or at the earliest opportunity afterwards, the defendant

(i) inserted in the newspaper in which the defamatory matter was published a full and fair retraction thereof and a full apology for the defamation, or, if the newspaper is one ordinarily published at intervals exceeding one week, that he offered to publish such retraction and apology in any newspaper to be selected by the plaintiff; or

(ii) broadcast such retraction and apology, from the broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

(2) The defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of defamation to the same purport or effect as that for which action is brought. Idem

18. (1) The plaintiff shall recover only special damage if it appears on the trial When plaintiff to recover special damage only

(a) that the alleged defamatory matter was published in good faith;

(b) that there was reasonable ground to believe that the publication thereof was for the public benefit;

(c) that it did not impute to the plaintiff the commission of a criminal offence;

(d) that the publication took place in mistake or misapprehension of the facts; and

(e) either

(i) where the alleged defamatory matter was published in a newspaper, that a full and fair retraction of and a full apology for any statement therein alleged to be erroneous were published in the newspaper before the commencement of the action, and were so published in as conspicuous a place and type as was the alleged defamatory matter; or

(ii) where the alleged defamatory matter was broadcast, that the retraction and apology were broadcast from broadcasting stations from which the alleged defamatory matter was broadcast, on at least two occasions on different days and at the same time of day as the alleged defamatory matter was broadcast or as near as possible to that time.

Non-application of subs. (1)

(2) Subsection (1) does not apply to the case of defamation against any candidate for public office unless the retraction and apology are

(a) made editorially in the newspaper in a conspicuous manner; or

(b) broadcast,

at least five days before the election, as the case may require.

Non-application of ss. 14, 15 and 18

19. (1) No defendant in an action for defamation published in a newspaper is entitled to the benefit of sections 14, 15 and 18 unless the name of the proprietor and publisher and address of publication are stated in a conspicuous place in the newspaper.

Printed copy of newspaper

(2) The production of a printed copy of a newspaper is *prima facie* evidence of the publication of the printed copy, and of the truth of the statements mentioned in subsection (1).

Where ss. 13, 14, 17 do not apply

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station

(a) alleges that defamation against him has been broadcast from the station; and

(b) requests the name and address of the owner or operator of the station, or the names and addresses of the owner and the operator of the station,

sections 14, 15 and 18 do not apply with respect to an action by the person against the owner or operator for the alleged defamation unless the person whose name and address are so requested delivers the requested information to the first mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station.

Appendix D

CHAPTER 19.

An Act respecting Actions of Libel and Slander.

[20th April, 1891.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

"Public newspaper or other periodical."

1. In this Act the phrase "public newspaper or other periodical publication" shall be held to include any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale and published periodically, or in parts or numbers at intervals not exceeding thirty-one days between the publication of any two such papers, parts, or numbers; and also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements.

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed.

2. On the trial of any action for the making or publishing any libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, and shall not be required or directed by the Court or Judge before whom such action is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action; but the Court or Judge before whom such trial is had shall, according to the discretion of such Court or Judge, give the opinion and directions of such Court or Judge to the jury on the matter in issue, as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act.

Averments in actions of libel or slander.

3. In actions of libel and slander, the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient.

Defendant may prove in mitigation that he offered a written apology.

4. In any action for defamation where the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on demurrer, or by admission, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation before the commencement of the action; or in case the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity.

One clear day must elapse between the cause of action and issue of writ.

Defendant may plead that libel was inserted without malice or gross negligence, and that he offered to publish an apology.

5. In an action for libel contained in a public newspaper or other periodical publication, one clear day must be allowed to elapse between the cause of action complained of and the issue of the writ thereupon. In any such action the defendant may plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication a full apology for the libel; or if the newspaper or periodical publication in which the libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff in the action:

(1.) In any such action the plaintiff shall recover actual damages only if it appears on the trial of the action that the article was published in good faith, and that there was reasonable ground to believe that the same was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retractation of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or other periodical publication aforesaid, or in any regular issue thereof published within three days after the service of the writ, and was so published in as conspicuous a place and type as was the article complained of:

Proviso: Candidate for election.

(a.) Provided, however, that the provisions of this section and subsection shall not apply to the case of any libel against any candidate, whether at a Parliamentary or a Municipal election, unless the retraction of the charge is made editorially in a conspicuous manner at least five days before the election.

6. Any defendant may with such defence pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment shall be of the same effect, and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs, and the form of pleading (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant), as payment of money into Court in other cases; and to such defence the plaintiff may reply generally, denying the whole thereof.

Defendant may pay money into Court as amends.

7. All reports of proceedings in any Court of Justice, published in a public newspaper or other periodical publication, shall be privileged, provided that they are fair and authentic and without comments, unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff.

Fair report of judicial proceedings to be privileged.

8. In an action brought for libel contained in a public newspaper or periodical publication, the defendant may, at any time after the filing of the statement of claim, apply to the Court or a Judge for security for costs, upon notice and an affidavit by the defendant or his agent, shewing the nature of the action and of the defence, and shewing that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a verdict or judgment be given in favour of the defendant, and that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, and that the grounds of action are trivial or frivolous; and the Court or Judge may make an order that the plaintiff shall give security for the costs to be incurred in such action, and the security so ordered shall be given in accordance with the practice in cases where a plaintiff resides out of the Province, and the order shall be a stay of proceedings until the proper security is given as aforesaid:

Security for costs.

(a) But where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs under this Act, unless he satisfies the Court or Judge that the action is trivial or frivolous, or that the several circumstances which under section 5 of this Act entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge:

(1) For the purposes of this section the plaintiff or the defendant, or their agents, may be examined upon oath at any time after the statement of claim has been filed.

9. Every action for libel contained in a public newspaper or other periodical publication, shall be tried in the county where the chief

Where action shall be tried.

office of such newspaper or periodical is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the Court or a Judge may direct the issues to be tried or the damages to be assessed in any other county if it be made to appear to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to payment of witness fees, and otherwise, as may seem proper.

Fair report of public meeting to be privileged.

10. A report published in a public newspaper or other periodical publication of the proceedings of a public meeting shall be privileged if the meeting was lawfully convened for a lawful purpose and open to the public, and if the report was fair and accurate and published without malice, and if the publication of the matter complained of was for the public benefit: Provided always, that the protection intended to be afforded by this section shall not be available as a defence in any proceeding if the plaintiff can show that the defendant has refused to insert in a newspaper in which the report containing the matter complained of appeared, a reasonable letter or statement of explanation or contradiction by or on behalf of the plaintiff:

Proviso.

Meaning of "public meeting."

(1.) The words "a public meeting" in this section shall extend to any lawful meeting to which the public are invited, and of which announcement has been made by printed or written notice thereof being posted up in at least six conspicuous places in the locality or neighbourhood where the meeting is held, or by advertisement in a public newspaper published in such locality or neighbourhood, or if there be none published therein, then in one published nearest to the place of meeting.

Short title.

11. This Act may be cited as the "Defamation Act, 1891."

VICTORIA, B. C.:
Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty.

CHAPTER 120.

An Act respecting Actions of Libel and Slander

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

1. This Act may be cited as the "Law of Defamation Amendment Act." **Short title.**

Interpretation.

2. In the construction of this Act the following expressions shall, unless there be something in the subject-matter or context repugnant thereto, have assigned to them the meanings following, viz:— **Interpretation.**

"Public newspaper or other periodical publication" shall be held to include any paper containing public news, intelligence, or occurrences, or any remarks or observations therein printed for sale and published periodically, or in parts or numbers at intervals not exceeding thirty-one days between the publication of any two such papers, parts, or numbers; and also any paper printed in order to be dispersed and made public weekly or oftener, or at intervals not exceeding thirty-one days, and containing only, or principally, advertisements. 1891, c. 19, s. 1. **"Public newspaper or other periodical publication."**

"Public meeting" shall mean any meeting bonâ fide and lawfully held for a public purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted. 1891, c. 19, s. 10, *part*; 51 & 52 Vict. (Imp.), c. 64, s. 4, *part*. **"Public meeting."**

Privileged Reports.

3. A fair and accurate report in any public newspaper or other periodical publication of proceedings publicly heard before any Court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged: Provided that nothing in this **Newspaper reports of proceedings in Court privileged.**

section shall authorise the publication of any blasphemous or indecent matter. 1891, c. 19, s. 7; 51 & 52 Vict. (Imp.), c. 64, s. 3.

Newspaper reports of public meetings and proceedings, and publication of official reports, privileged.

4. A fair and accurate report published in any public newspaper or other periodical publication of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a municipal council, school board, board or local authority formed or constituted under the provisions of any Act, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act, or other lawful warrant or authority, or select committees of the Legislative Assembly, and the publication at the request of any Government office or department, or any public officer, of any notice or report issued for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously: Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter: Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper or other periodical publication in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication and has refused or neglected to insert the same: Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit. 1891, c. 19, s. 10; 51 & 52 Vict. (Imp.), c. 64, s. 4.

Slander of Women.

Words imputing unchastity per se actionable.

5. Words spoken and published after the passing of this Act which impute unchastity or adultery to any woman or girl shall not require special damage to render them actionable: Provided that in any action for words spoken and made actionable by this section, a plaintiff shall not recover more costs than damages unless the Judge at the trial of the action shall certify that there was reasonable ground for bringing the action. 54 & 55 Vict. (Imp.), c. 51, s. 1.

Retraction and Tender of Amends.

One clear day must elapse between the cause of action and issue of writ.

6. In an action for libel contained in a public newspaper or other periodical publication, one clear day must be allowed to elapse between the cause of action complained of and the issue of the writ thereupon.

Defendant may plead that libel was inserted without malice or gross negligence, and that he offered to publish an apology.

In any such action the defendant may plead that the libel was inserted in the newspaper or other periodical publication without actual malice and without gross negligence, and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in the newspaper or other periodical publication a full apology for the libel; or if the newspaper or periodical publication in which the libel appeared be one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff in the action:

(1.) In any such action the plaintiff shall recover actual damages only if it appears on the trial of the action that the article was published in good faith, and that there was reasonable ground to believe that the same was for the public benefit, and if it did not involve a criminal charge, and if it appears that the publication took place in mistake or misapprehension of the facts, and that a full and fair retractation of any statement therein alleged to be erroneous was published either in the next regular issue of the newspaper, or other periodical publication aforesaid, or in any regular issue thereof published within three days after the service of the writ, and was so published in as conspicuous a place and type as was the article complained of:

Proviso: Candidate for election.

(*a.*) Provided however, that the provisions of this section and sub-section shall not apply to the case of any libel against any candidate, whether at a parliamentary or a municipal election, unless the retraction of the charge is made editorially in a conspicuous manner at least five days before the election. 1891, c. 19, s. 5.

Defendant may pay money into Court as amends.

7. Any defendant may with such defence pay into Court a sum of money by way of amends for the injury sustained by the publication of the libel, and such payment shall be of the same effect, and available to the same extent and in the same manner, and be subject to the same rules and regulations as to costs, and the form of pleading (except so far as regards the additional facts hereinbefore required to be pleaded by such defendant), as payment of money into Court in other cases; and to such defence the plaintiff may reply generally, denying the whole thereof. 1891, c. 18, s. 6.

Mitigation of Damages.

Defendant may prove in mitigation that he offered a written apology.

8. In any action for defamation where the defendant has pleaded not guilty only, or has suffered judgment by default, or judgment has been given against him on any proceedings in lieu of demurrer, or by admission, he may give in evidence, in mitigation of damages, that he made or offered a written or printed apology to the plaintiff for such defamation before the commencement of the action; or in case the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. 1891, c. 19, s. 4.

Evidence in mitigation of damages, of damages recovered

9. At the trial of an action for a libel contained in any newspaper or other periodical publication the defendant shall be at liberty to give

in another action, or received by way of compromise.

in evidence in mitigation of damages that the plaintiff has already recovered (or has brought action for) damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought. 51 & 52 Vict. (Imp.), c. 64, s. 6.

Procedure.

Averments in actions of libel or slander.

10. In actions of libel and slander, the plaintiff may aver that the words or matter complained of were used in a defamatory sense, specifying such defamatory sense without any prefatory averment to show how such words or matter were used in that sense, and such averment shall be put in issue by the denial of the alleged libel or slander; and where the words or matter set forth, with or without the alleged meaning, show a cause of action, the statement of claim shall be sufficient. 1891, c. 19, s. 3.

Jury not to be directed to return a verdict of guilty on the mere proof of the publication and of the sense ascribed.

11. On the trial of any action for the making or publishing any libel, on the plea of not guilty pleaded, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue in such action, and shall not be required or directed by the Court or Judge before whom such action is tried, to find the defendant guilty, merely on the proof of publication by such defendant of the paper charged to be a libel, and of the sense ascribed to the same in such action; but the Court or Judge before whom such trial is had shall, according to the discretion of such Court or Judge, give the opinion and directions of such Court or Judge to the jury on the matter in issue, as in other cases; and the jury may on such issue find a special verdict, if they think fit so to do, and the defendant, if found guilty, may move in arrest of judgment on such ground and in such manner as he might have done before the passing of this Act. 1891, c. 19, s. 2.

Consolidation of actions.

12. It shall be competent for the Supreme Court or a Judge, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel or defamation brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel or defamation shall also be entitled to be joined in a common action, upon a joint application being made by such new defendants and the defendants in the actions already consolidated. 51 & 52 Vict. (Imp.), c. 64, s. 5.

Verdict, assessment of damages and apportionment of costs in consolidated actions.

13. In a consolidated action under the next preceding section, the Court or jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant, in the same way as if the actions consolidated had been tried separately; and if the Court or jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the Judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants. 51 & 52 Vict. (Imp.), c. 64, s. 5.

Obscene matter need not be set forth in pleadings.

14. It shall not be necessary in any action for libel to set out in any pleading or process any obscene passages, but it shall be sufficient to deposit in the proper registry the book, newspaper, or other document containing the alleged libel, together with particulars showing precisely by reference to pages, columns and lines where the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings had as though the passages complained of had been set out in pleading or process. 51 & 52 Vict. (Imp.), c. 64. s. 7.

Where action shall be tried.

15. Every action for libel contained in a public newspaper or other periodical publication shall be tried in the county where the chief office of such newspaper or periodical is, or in the county wherein the plaintiff resides at the time the action is brought; but upon the application of either party the Court or a Judge may direct the issues to be tried or the damages to be assessed in any other county if it be made to appear to be in the interests of justice, or that it will promote a fair trial, and may impose such terms as to payment of witness fees, and otherwise, as may seem proper. 1891, c. 19, s. 9.

Security for costs.

16. In an action brought for libel contained in a public newspaper or periodical publication, the defendant may, at any time after the filing of the statement of claim, apply to the Court or a Judge for security for costs, upon notice and an affidavit by the defendant or his agent, showing the nature of the action and of the defence, and showing that the plaintiff is not possessed of property sufficient to answer the costs of the action in case a verdict or judgment be given in favour of the defendant, and that the defendant has a good defence upon the merits, and that the statements complained of were published in good faith, and that the grounds of action are trivial or frivolous; and the Court or Judge may make an order that the plaintiff shall give security for the costs to be incurred in such action, and the security so ordered shall be given in accordance with the practice in cases where plaintiff resides out of the Province, and the order shall be a stay of proceedings until the proper security is given as aforesaid:

(*a*.) But where the alleged libel involves a criminal charge the defendant shall not be entitled to security for costs under this

Act, unless he satisfies the Court or Judge that the action is trivial or frivolous, or that the several circumstances which, under section 6 of this Act, entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstance that the article complained of involves a criminal charge:

(1.) For the purposes of this section the plaintiff or the defendant, or their agents, may be examined upon oath at any time after the statement of claim has been filed. 1891, c. 19, s. 8.

VICTORIA, B. C.:
Printed by RICHARD WOLFENDEN, Printer to the Queen's Most Excellent Majesty.
1897.

Appendix F

CHAPTER 64.

An Act to amend the Law of Libel.

[24th December 1888.]

WHEREAS it is expedient to amend the law of libel : Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Interpretation.

1. In the construction of this Act the word "newspaper" shall have the same meaning as in the Newspaper Libel and Registration Act, 1881.

Repeal of 44 & 45 Vict. c. 50. s. 2.

2. Section two of the Newspaper Libel and Registration Act, 1881, is hereby repealed.

Newspaper reports of proceedings in court privileged.

3. A fair and accurate report in any newspaper of proceedings publicly heard before any court exercising judicial authority shall, if published contemporaneously with such proceedings, be privileged : Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter.

Newspaper reports of proceedings of public meetings and of certain bodies and persons privileged.

4. A fair and accurate report published in any newspaper of the proceedings of a public meeting, or (except where neither the public nor any newspaper reporter is admitted) of any meeting of a vestry, town council, school board, board of guardians, board or local authority formed or constituted under the provisions of any Act of Parliament, or of any committee appointed by any of the above-mentioned bodies, or of any meeting of any commissioners authorised to act by letters patent, Act of Parliament, warrant under the Royal Sign Manual, or other lawful warrant or authority, select committees of either House of Parliament, justices of the peace in quarter sessions assembled for administrative or deliberative purposes, and the publication at the request of any Government office or department, officer of state, commissioner of police, or chief constable of any notice or report issued by them for the information of the public, shall be privileged, unless it shall be proved that such report or publication was published or made maliciously : Provided that nothing in this section shall authorise the publication of any blasphemous or indecent matter : Provided also, that the protection intended to be afforded by this section shall not be available as a defence in any proceedings if it shall be proved that the defendant has been requested to insert in the newspaper in which the report or other publication complained of appeared a reasonable letter or statement by way of contradiction or explanation of such report or other publication, and has refused or neglected to insert the same : Provided further, that nothing in this section contained shall be deemed or construed to limit or abridge any privilege now by law existing, or to protect the publication of any matter not of public concern and the publication of which is not for the public benefit.

For the purposes of this section "public meeting" shall mean any meeting bonâ fide and lawfully held for a lawful purpose, and for the furtherance or discussion of any matter of public concern, whether the admission thereto be general or restricted.

Consolidation of actions.

5. It shall be competent for a judge or the court, upon an application by or on behalf of two or more defendants in actions in respect to the same, or substantially the same, libel brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect to the same, or substantially the same, libel shall also be entitled to be joined in a common action upon a joint application be made by such new defendants and the defendants in the actions already consolidated.

In a consolidated action under this section the jury shall assess the whole amount of the damages (if any) in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately; and if the jury shall have found a verdict against the defendant or defendants in more than one of the actions so consolidated, they shall proceed to apportion the amount of damages which they shall have so found between and against the said last-mentioned defendants; and the judge at the trial, if he awards to the plaintiff the costs of the action, shall thereupon make such order as he shall deem just for the apportionment of such costs between and against such defendants.

Power to defendant to give certain evidence in mitigation of damages.

6. At the trial of an action for a libel contained in any newspaper the defendant shall be at liberty to give in evidence in mitigation of damages that the plaintiff has already recovered (or has brought actions for) damages or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as the libel for which such action has been brought.

Obscene matter need not be set forth in indictment or other judicial proceeding.

7. It shall not be necessary to set out in any indictment or other judicial proceeding instituted against the publisher of any obscene libel the obscene passages, but it shall be sufficient to deposit the book, newspaper, or other documents containing the alleged libel with the indictment or other judicial proceeding, together with particulars showing precisely by reference to pages, columns, and lines in what part of the book, newspaper, or other document the alleged libel is to be found, and such particulars shall be deemed to form part of the record, and all proceedings may be taken thereon as though the passages complained of had been set out in the indictment or judicial proceeding.

Repeal of 44 & 45 Vict. c. 60. s. 3. Order of Judge required for prosecution of newspaper proprietor, &c.

8. Section three of the forty-fourth and forty-fifth Victoria, chapter sixty, is hereby repealed, and instead thereof be it enacted that no criminal prosecution shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the order of a Judge at Chambers being first had and obtained.

Such application shall be made on notice to the person accused, who shall have an opportunity of being heard against such application.

9. Every person charged with the offence of libel before any court of criminal jurisdiction, and the husband or wife of the person so charged, shall be competent, but not compellable, witnesses on every hearing at every stage of such charge.

Person proceeded against criminally a competent witness.

10. This Act shall not apply to Scotland.

Extent of Act.

11. This Act may be cited as the Law of Libel Amendment Act, 1888.

Short title.

Appendix G

CH. 66 *Defamation Act*, 1952 15 & 16 GEO. 6 & 1 ELIZ. 2

An Act to amend the law relating to libel and slander and other malicious falsehoods.

[30th October 1952.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Broadcast statements.

1. For the purposes of the law of libel and slander, the broadcasting of words by means of wireless telegraphy shall be treated as publication in permanent form.

Slander affecting official, professional or business reputation.

2. In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.

Slander of title, &c.

3.—(1) In an action for slander of title, slander of goods or other malicious falsehood, it shall not be necessary to allege or prove special damage—

(*a*) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form ; or

(*b*) if the said words are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Section one of this Act shall apply for the purposes of this section as it applies for the purposes of the law of libel and slander.

Unintentional defamation.

4.—(1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section ; and in any such case—

(*a*) if the offer is accepted by the party aggrieved and is duly performed, no proceeedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication) ;

(*b*) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for purposes of this section, and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (*b*) of subsection (1) of this section no evidence, other than evidence of facts specified in the affidavit, shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer—

(*a*) in any case, to publish or join in the publication of a suitable correction of the words complained of, and a sufficient apology to the party aggrieved in respect of those words;

(*b*) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved—

(*a*) any question as to the steps to be taken in fulfilment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the High Court, whose decision thereon shall be final;

(*b*) the power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (*a*) of this subsection, shall include power to order the payment by the person making the offer to the party aggrieved of costs on an indemnity basis and any expenses reasonably incurred or to be incurred by that party in consequence of the publication in question;

and if no such proceedings as aforesaid are taken, the High Court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

(*a*) that the publisher did not intend to publish them of and concerning that other person, and did not know of circumstances by virtue of which they might be understood to refer to him; or (*b*) that the words were not defamatory on the face of them, and the publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person,

and in either case the publisher exercised all reasonable care in relation to the publication ; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (*b*) of subsection (1) of this section shall not apply in relation to the publication by any person of words of which he is not the author unless he proves that the words were written by the author without malice.

Justification.

5. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

Fair comment.

6. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

Qualified privilege of newspapers.

7.—(1) Subject to the provisions of this section, the publication in a newspaper of any such report or other matter as is mentioned in the Schedule to this Act shall be privileged unless the publication is proved to be made with malice.

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in Part II of the Schedule to this Act, the provisions of this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a reasonable letter or statement by way of explanation or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or not reasonable having regard to all the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

(4) Nothing in this section shall be construed as limiting or abridging any privilege subsisting (otherwise than by virtue of section four of the Law of Libel Amendment Act, 1888) immediately before the commencement of this Act.

(5) In this section the expression "newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the United Kingdom either periodically or in parts or numbers at intervals not exceeding thirty-six days.

8. Section three of the Law of Libel Amendment Act, 1888 (which relates to contemporary reports of proceedings before courts exercising judicial authority) shall apply and apply only to courts exercising judicial authority within the United Kingdom.

Extent of Law of Libel Amendment Act, 1888, s. 3.

9.—(1) Section three of the Parliamentary Papers Act, 1840 (which confers protection in respect of proceedings for printing extracts from or abstracts of parliamentary papers) shall have effect as if the reference to printing included a reference to broadcasting by means of wireless telegraphy.

Extension of certain defences to broadcasting.

(2) Section seven of this Act and section three of the Law of Libel Amendment Act, 1888, as amended by this Act shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station within the United Kingdom, and in relation to any broadcasting by means of wireless telegraphy of any such report or matter, as they apply in relation to reports and matters published in a newspaper and to publication in a newspaper ; and subsection (2) of the said section seven shall have effect, in relation to any such broadcasting, as if for the words "in the newspaper in which" these were substituted the words "in the manner in which."

(3) In this section "broadcasting station" means any station in respect of which a licence granted by the Postmaster General under the enactments relating to wireless telegraphy is in force, being a licence which (by whatever form of words) authorises the use of the station for the purpose of providing broadcasting services for general reception.

10. A defamatory statement published by or on behalf of a candidate in any election to a local government authority or to Parliament shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

Limitation on privilege at elections.

11. An agreement for indemnifying any person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is a good defence to any action brought upon it.

Agreements for indemnity.

12. In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.

Evidence of other damages recovered by plaintiff.

13. Section five of the Law of Libel Amendment Act, 1888 (which provides for the consolidation, on the application of the defendants, of two or more actions for libel by the same plaintiff) shall apply to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to actions for libel ; and references in that section to the

Consolidation of actions for slander, &c.

same, or substantially the same, libel shall be construed accordingly.

Application of Act to Scotland.

14. This Act shall apply to Scotland subject to the following modifications, that is to say:—

(*a*) sections one, two, eight and thirteen shall be omitted ;

(*b*) for section three there shall be substituted the following section—

"Actions for verbal injury.

3. In any action for verbal injury it shall not be necessary for the pursuer to aver or prove special damage if the words on which the action is founded are calculated to cause pecuniary damage to the pursuer." ;

(*c*) subsection (2) of section four shall have effect as if at the end thereof there were added the words "Nothing in this subsection shall be held to entitle a defender to lead evidence of any fact specified in the declaration unless notice of his intention so to do has been given in the defences." ; and

(*d*) for any reference to libel, or to libel or slander, there shall be substituted a reference to defamation ; the expression "plaintiff" means pursuer ; the expression "defendant" means defender ; for any reference to an affidavit made by any person there shall be substituted a reference to a written declaration signed by that person ; for any reference to the High Court there shall be substituted a reference to the Court of Session or, if an action of defamation is depending in the sheriff court in respect of the publication in question, the sheriff ; the expression "costs" means expenses ; and for any reference to a defence of justification there shall be substituted a reference to a defence of *veritas*.

Legislative powers of Parliament of Northern Ireland.

15. No limitation on the powers of the Parliament of Northern Ireland imposed by the Government of Ireland Act, 1920, shall preclude that Parliament from making laws for purposes similar to the purposes of this Act.

Interpretation.

16.—(1) Any reference in this Act to words shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning.

(2) The provisions of Part III of the Schedule to this Act shall have effect for the purposes of the interpretation of that Schedule.

(3) In this Act "broadcasting by means of wireless telegraphy" means publication for general reception by means of wireless telegraphy within the meaning of the Wireless Telegraphy Act, 1949, and "broadcast by means of wireless telegraphy" shall be construed accordingly.

(4) Where words broadcast by means of wireless telegraphy are simultaneously transmitted by telegraph as defined by the Telegraph Act, 1863, in accordance with a licence granted by the Postmaster General the provisions of this Act shall apply as if the transmission were broadcasting by means of wireless telegraphy.

17.—(1) This Act applies for the purposes of any proceedings begun after the commencement of this Act, whenever the cause of action arose, but does not affect any proceedings begun before the commencement of this Act.

Proceedings affected and saving.

(2) Nothing in this Act affects the law relating to criminal libel.

18.—(1) This Act may be cited as the Defamation Act, 1952, and shall come into operation one month after the passing of this Act.

Short title, commencement, extent and repeals.

(2) This Act (except section fifteen) shall not extend to Northern Ireland.

(3) Sections four and six of the Law of Libel Amendment Act, 1888, are hereby repealed.

SCHEDULE

Sections 7, 16.

NEWSPAPER STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of any proceedings in public of the legislature of any part of Her Majesty's domains outside Great Britain.

2. A fair and accurate report of any proceedings in public of an international organisation of which the United Kingdom or Her Majesty's Government in the United Kingdom is a member, or of any international conference to which that government sends a representative.

3. A fair and accurate report of any proceedings in public of an international court.

4. A fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of Her Majesty's dominions outside the United Kingdom, or of any proceedings before a court-martial held outside the United Kingdom under the Naval Discipline Act, the Army Act or the Air Force Act.

5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by the government or legislature of any part of Her Majesty's dominions outside the United Kingdom.

6. A fair and accurate copy of or extract from any register kept in pursuance of any Act of Parliament which is open to inspection by the public, or of any other document which is required by the law of any part of the United Kingdom to be open to inspection by the public.

7. A notice or advertisement published by or on the authority of any court within the United Kingdom or any judge or officer of such a court.

PART II

STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

8. A fair and accurate report of the findings or decision of any of the following associations, or of any committee or government body thereof, that is to say—

(*a*) an association formed in the United Kingdom for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication ;

(*b*) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons ;

(*c*) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime,

being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association.

9. A fair and accurate report of the proceedings at any public meeting held in the United Kingdom, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of

any matter of public concern, whether the admission to the meeting is general or restricted.

10. A fair and accurate report of the proceedings at any meeting or sitting in any part of the United Kingdom of—

(*a*) any local authority or committee of a local authority or local authorities ;

(*b*) any justice or justices of the peace acting otherwise than as a court exercising judicial authority ;

(*c*) any commission, tribunal, committee or person appointed for the purposes of any inquiry by Act of Parliament, by Her Majesty or by a Minister of the Crown ;

(*d*) any person appointed by a local authority to hold a local inquiry in pursuance of any Act of Parliament ;

(*e*) any other tribunal, board, committee or body constituted by or under, and exercising functions under, an Act of Parliament,

not being a meeting or sitting admission to which is denied to representatives of newspapers and other members of the public.

11. A fair and accurate report of the proceedings at a general meeting of any company or association constituted, registered or certified by or under any Act of Parliament or incorporated by Royal Charter, not being a private company within the meaning of the Companies Act, 1948.

12. A copy or fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of any government department, officer of state, local authority or chief officer of police.

PART III

INTERPRETATION

13. In this Schedule the following expressions have the meanings hereby respectively assigned to them, that is to say:—

"Act of Parliament" includes an Act of the Parliament of Northern Ireland, and the reference to the Companies Act, 1948, includes a reference to any corresponding enactment of the Parliament of Northern Ireland ;

"government department" includes a department of the Government of Northern Ireland ;

"international court" means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States ;

"legislature", in relation to any territory comprised in Her Majesty's dominions which is subject to a central and a local legislature, means either of those legislatures ;

"local authority" means any authority or body to which the Local Authorities (Admission of the Press to Meetings) Act, 1908, or the Local Government (Ireland) Act, 1902, as amended by any enactment of the Parliament of Northern Ireland, applies ;

"part of Her Majesty's dominions" means the whole of any territory within those dominions which is subject to a separate legislature.

14. In relation to the following countries and territories, that is to say, India, the Republic of Ireland, any protectorate, protected state or trust territory within the meaning of the British Nationality Act, 1948, any territory administered under the authority of a country mentioned in subsection (3) of section one of that Act, the Sudan and the New Hebrides, the provisions of this Schedule shall have effect as they have effect in relation to Her Majesty's dominions, and references therein to Her Majesty's dominions shall be construed accordingly.

Table of Statutes referred to in this Act

Short Title	Session and Chapter
Parliamentary Papers Act, 1840	3 & 4 Vict. c. 9.
Telegraph Act, 1863	26 & 27 Vict. c. 112.
Law of Libel Amendment Act, 1888	51 & 52 Vict. c. 64.
Local Government (Ireland) Act, 1902	2 Edw. 7. c. 38.
Local Authorities (Admission of the Press to Meetings) Act, 1908	8 Edw. 7. c. 43.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Companies Act, 1948	11 & 12 Geo. 6. c. 38.
British Nationality Act, 1948	11 & 12 Geo. 6. c. 56.
Wireless Telegraphy Act, 1949	12, 13 & 14 Geo. 6. c. 54.

Appendix H

FAULKS COMMITTEE

Draft Defamation Bill

ARRANGEMENT OF CLAUSES

Clause

1. Action for defamation.
2. Action for malicious falsehood and other actions.
3. Legal innuendo.
4. Defence of truth.
5. Defence of comment.
6. Reports of proceedings in court.
7. Proceedings in Parliament.
8. Qualified privilege.
9. Defeat of qualified privilege.
10. Translations.
11. Publication of certain particular matters to have qualified privilege.
12. Infection by joint publishers.
13. Unintentional defamation.
14. Multiple publication.
15. Innocent dissemination by printer.
16. Protection for book publisher and author.
17. Actions by trading corporations and other bodies.
18. Assessment of damages.
19. Mitigation of damages.
20. Action in Scotland without conclusion for damages or interdict.
21. Effect of death on actions.
22. Defamation of the dead.
23. Jury trials.
24. Awards of damages in jury trials.
25. Limitation of actions.
26. Limitation of actions in Scotland.
27. Striking-out and dismissal of actions.
28. County court jurisdiction.
29. Legal aid.
30. Legal aid in Scotland.
31. Consolidation of actions.
32. Agreements for indemnity.
33. Limitation on privilege at elections.
34. Criminal libel.
35. Interpretation.
36. Saving for rules of law.
37. Proceedings affected and saving.
38. Application of Act to Scotland.
39. Rules of court.

Clause

40. Repeals.
41. Short title, commencement and extent.

SCHEDULES:

Schedule 1—Special categories of reports and statements having qualified privilege.
Schedule 2—Enactments repealed.

Defamation Bill

DRAFT

OF A

BILL

TO

MAKE fresh provision in the law relating to defamation, malicious falsehood and criminal libel; and for purposes connected therewith.

A.D. 1975

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Action for defamation.

1.—(1) Defamation for the purpose of civil proceedings shall consist of the publication to a third party of matter which in all the circumstances would be likely to affect a person adversely in the estimation of reasonable people generally; and "action for defamation" shall be construed accordingly.

(2) It shall no longer be competent for a plaintiff to bring an action for libel or an action for slander.

(3) In an action for defamation it shall not be necessary for the plaintiff to allege or prove special damage, except as provided by sections 17(1) and 21(3) of this Act.

Action for malicious falsehood and other actions.

2.—(1) In an action for malicious falsehood, slander of title or slander of goods, it shall not be necessary to allege or prove special damage if the publication of the matter in respect of which the action is brought is likely to cause pecuniary damage to the plaintiff.

(2) In an action in Scotland in respect of words not involving insult or damage to reputation, it shall not be necessary to aver or prove specific pecuniary loss if the charges—

(*a*) contained in the matter published, and

(*b*) complained of in the action,

are likely to cause pecuniary loss to the pursuer.

Legal innuendo.

3. A claim in defamation based on a single publication and relying both on the natural and ordinary meaning of words and on a legal innuendo shall constitute a single cause of action.

Defence of truth.

4.—(1) The defence in relation to an action for libel or slander known before the commencement of this Act as the defence of justification shall, in relation to an action for defamation brought after the commencement of this Act, be known as the defence of truth.

(2) Where an action for defamation has been brought in respect of the whole or any part of matter published, the defendant may allege and prove the truth of any of the charges contained in such matter and the defence of truth

shall be held to be established if such matter, taken as a whole, does not materially injure the plaintiff's reputation having regard to any such charges which are proved to be true in whole or in part.

Defence of comment.

5.—(1) The defence in relation to an action for libel or slander known before the commencement of this Act as the defence of fair comment on a matter of public interest shall, in relation to an action for defamation brought after the commencement of this Act, be known as the defence of comment on a matter of public interest (in this Act referred to as the "defence of comment").

(2) In an action for defamation in respect of words including or consisting of expression of opinion, a defence of comment—

(*a*) shall not fail by reason only that the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such of the assertions as are proved to be true are relevant and afford a foundation therefor;

(*b*) shall be defeated—

(i) in respect of a defendant who is the author of the matter containing the opinion, if the plaintiff proves that the opinion expressed was not the defendant's genuine opinion, and

(ii) in respect of any other defendant, if the plaintiff proves that the opinion expressed was not, and was not believed by that defendant to be, the genuine opinion of the author.

(3) Any rule of law which provides that the defence of fair comment on a matter of public interest in an action for libel or slander shall be defeated if the plaintiff proves malice on the part of the defendant shall cease to have effect.

(4) The defence of comment in an action for defamation shall not be limited or otherwise affected by the fact that base or sordid motives have been attributed to the plaintiff.

(5) Nothing in this section shall affect the liability of the defendant in an action for defamation for the acts of his servant or agent.

Reports of proceedings in court.

6. For the avoidance of doubt, the publication of a fair, accurate and contemporaneous report in any newspaper or broadcast programme of any proceedings in public before a court (including a court-martial and a tribunal or inquiry recognised by law and exercising judicial functions) in any part of the United Kingdom, or in the Channel Island or the Isle of Man, shall be protected by absolute privilege.

Proceedings in Parliament.

7.—(1) Proceedings in Parliament shall be protected by absolute privilege.

(2) Where proceedings in Parliament are being broadcast by television or sound broadcasting—

(*a*) where the broadcast is live, the transmission of the words spoken by a member of either House of Parliament shall be protected by absolute privilege, and the transmission of the pictures by television shall be protected by qualified privilege;

(*b*) where the broadcast is not live, the transmission shall be protected by qualified privilege.

(3) Command papers shall be protected by qualified privilege.

(4) The publication of a fair and accurate report of proceedings in public in Parliament shall be protected by qualified privilege but nothing in this section shall be taken to affect the provisions of the Parliamentary Papers Act 1840.

(5) In any civil or criminal proceeding in respect of the publication of any extract from or abstract of any report, paper, votes or proceedings published by order or by the authority of either House of Parliament, it shall be lawful to give in evidence such report, paper, votes or proceedings, and such publication shall be protected by qualified privilege.

(6) For the purpose of the defence of absolute privilege in an action or prosecution for defamation, the expression "proceedings in Parliament" shall without prejudice to the generality thereof include—

(*a*) all things said, done or written by a member or officer or by any person ordered or authorised to attend before either House of Parliament, in or in the presence of such House and in the course of a sitting of such House and for the purpose of the business being or about to be transacted, wherever such sitting may be held and whether or not it be held in the presence of strangers to such House:

Provided that the expression "House" shall be deemed to include any committee, sub-committee or other group or body of members or members and officers of either House of Parliament appointed by or with the authority of such House for the purpose of carrying out any of the functions of or of representing such House; and

(*b*) all things said, done or written between members or between members and officers of either House of Parliament or between members and Ministers of the Crown for the purpose of enabling any member or any such officer to carry out his functions as such, provided that publication thereof be no wider than is reasonably necessary for that purpose.

In this subsection, "member" means a member of either House of Parliament; and "officer of either House of Parliament" means a person, not being a member, whose duties require him from time to time to participate in proceedings in Parliament and who, in the opinion of the court, should be entitled in the public interest to the same absolute privilege in relation to an action or prosecution for defamation as a member.

Qualified privilege.

8.—(1) Subject to the following provisions of this section, the publication of any such report or other matter as is mentioned in Schedule 1 to this Act shall be protected by qualified privilege.

(2) In an action for defamation in respect of the publication of any such report or other matter as is mentioned in Part II of Schedule 1 to this Act, the provisions of this section shall not be a defence if it is proved that the defendant—

(*a*) has been requested by the plaintiff to publish at the defendant's expense and in such manner as is adequate or reasonable in the circumstances a reasonable letter or statement by way of explanation or contradiction, and

(*b*) has refused or neglected to do so or has done so in a manner not adequate or not reasonable in the circumstances.

(3) Nothing in this section shall be construed as protecting the publication of—

(*a*) any matter the publication of which is prohibited by law;

(*b*) any matter which is not of public concern and the publication of which is not for the public benefit; or

(*c*) any blasphemous or obscene matter.

Defeat of qualified privilege.

9.—(1) The defence of qualified privilege shall be defeated if the plaintiff proves that the defendant in making the publication complained or took improper advantage of the occasion of publication giving rise to the privilege.

(2) Any rule of law which provides that the defence of qualified privilege in any action for libel or slander shall be defeated if the plaintiff proves malice on the part of the defendant shall cease to have effect.

Translations.

10. Publication by any person of a translation by him, whether oral or written, shall be protected by qualified privilege provided that the words complained of have been translated in accordance with the sense and substance of the original.

Publication of certain particular matters to have qualified privilege.

11.—(1) Publication by a credit reference agency of matter issued in the ordinary course of the business of the agency shall be protected by qualified privilege.

(2) Publication in a technical or scientific journal approved by and registered with the Secretary of State of an article of a technical or scientific nature shall be protected by qualified privilege.

Infection by joint publishers.

12.—(1) In an action for defamation in respect of matter which includes or consists of expression of opinion, the defence of comment shall not fail by reason only of the fact that the opinion expressed by any person jointly responsible with the defendant for the matter published (whether or not that person is also a defendant in the action) is proved not to be his genuine opinion.

(2) The defence of qualified privilege shall not fail by reason only of the fact that any person jointly responsible with the defendant for the publication (whether or not that person is also a defendant is the action) is proved to have taken improper advantage of the occasion of publication.

(3) The publisher of a newspaper or broadcast programme shall not be liable for the acts of an unsolicited correspondent, whether or not anonymous, who, in contributing matter of public interest which has been published in the newspaper or programme, has expressed an opinion which is not his genuine opinion or has taken improper advantage of the occasion giving rise to a defence of privilege.

(4) Nothing in this section shall affect the liability of the defendant in an action for defamation for the acts of his servant or agent.

Unintentional defamation.

13.—(1) A person who has published matter alleged to be defamatory of another person may, if he claims that the matter was published by him innocently in relation to that other person, make an offer of amends under this section (herinafter in this section referred to as an "offer of amends").

(2) An offer of amends shall—

(*a*) be in writing;

(*b*) be expressed to be made for the purposes of this section;

(*c*) affirm that the person who has published the matter in question (hereinafter in this section referred to as "the publisher") published the matter innocently in relation to the party aggrieved;

(*d*) be made as soon as practicable after the publisher received notice that the matter was or might be defamatory of the party aggrieved; and

(*e*) include an offer to publish, or join in the publication of, a suitable correction of the matter complained of and a sufficient apology.

(3) If an offer of amends is accepted by the party aggrieved and is duly performed, no action for defamation shall be taken or continued by that party against the publisher in respect of the publication in question (but without prejudice to any cause of action against any other person jointly responsible for that publication).

(4) If an offer of amends is not accepted by the party aggrieved, it shall be a defence, in any action for defamation by him against the publisher in respect of the publication in question, to allege and prove—

(*a*) facts and circumstances which establish that the matter was published innocently in relation to the plaintiff;

(*b*) that the offer made fulfilled the requirements of paragraphs (*a*), (*b*), (*d*) and (*e*) of subsection (2) of this section; and

(*c*) that the offer has not been withdrawn.

(5) For the purposes of this section, matter shall be treated as published by the publisher innocently in relation to the party aggrieved if, and only if, the following conditions are satisfied, that is to say:—

(*a*) that a publisher did not intend to publish it of and concerning that party, and did not know of circumstances by virtue of which it might be understood to refer to him; or

(*b*) that the matter was not defamatory on the face of it, and the publisher did not know of circumstances by virtue of which it might be understood to be defamatory of the party aggrieved,

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Where an offer of amends is accepted by the party aggrieved:—

(*a*) if the parties do not agree on the form or manner of publication of the correction or apology, that question shall be referred to and determined by the judge in chambers, whose decision shall be final;

(*b*) the court shall in default of agreement between the parties have power to order the publisher to pay the costs of the party aggrieved on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question;

(*c*) where there are unsold copies of the published matter in question, the court may in default of agreement between the parties make such order as it deems appropriate, including *inter alia* an order—

(i) permitting the continuation or resumption of the distribution of such copies unamended; or

(ii) for the inclusion in such copies of a suitable correction of the words complained of; or

(iii) for the withdrawal of such copies.

(7) Where an offer of amends is not accepted by the party aggrieved and he brings or continues an action for defamation, claiming damages, the court, if satisfied *prima facie* that the complaint of the party aggrieved is of an insubstantial nature, may order him to give security for costs.

(8) An offer of amends which is not accepted by the party aggrieved shall not be construed as an admission of liability on the part of the publisher and shall not, without the consent of the publisher, be referred to in an action for defamation brought against him in respect of the publication in question.

Multiple publication.

14. Where an action for defamation in respect of matter published has been concluded (whether by way of judgment, decree, final order at a trial, settlement discontinuance or abandonment), the plaintiff shall not be allowed to take or continue any further proceedings against the defendant in that action in respect of the said matter except with the leave of the court and on notice to that defendant.

Innocent dissemination by printer.

15. Where an action for defamation has been brought against a printer in respect of charges contained in matter published, it shall be a defence for him to prove that:—

(*a*) he did not know that the matter contained the said charges,

(*b*) he did not know that the matter was of a character likely to contain charges of a defamatory nature, and

(*c*) his want of knowledge as aforesaid was not due to any negligence on his part.

Protection for book publisher and author.

16.—(1) Where, in an action for defamation in respect of matter published in a book, the plaintiff has expressly or by implication requested the defendant to withold, withdraw or correct the book, he shall not be entitled to recover additional damages on the ground that the defendant has continued to publish or failed to correct the book unless he has given the defendant an undertaking that, in the event of the action failing or being struck out or dismissed, he will compensate the defendant for any loss sustained by the defendant as a result of complying with the request.

(2) In order to enforce such an undertaking as is referred to in this section, the defendant shall bring separate proceedings.

Actions by trading corporations and other bodies.

17.—(1) An action for defamation brought in England and Wales by any of the bodies mentioned in paragraphs (*a*) to (*f*) of subsection (3) of this section shall fail unless that body alleges and proves—

(*a*) special damage; or

(*b*) that the matter published was likely to cause it pecuniary damage

(2) An action for defamation brought in Scotland by any of the bodies mentioned in subsection (3) of this section shall fail unless that body avers and proves that the matter published caused it, or was likely to cause it, pecuniary loss.

(3) The bodies referred to in subsections (1) and (2) of this section are:—

(*a*) a trading corporation;

(*b*) a non-trading corporation;

(*c*) a government department;

(*d*) a local authority;

(*e*) a body set up by or under any enactment;

(*f*) a trade union,

(*g*) in Scotland an unincorporate body.

Assessment of damages.

18.—(1) Damages recoverable in actions for defamation shall be by way of compensation.

(2) As from the commencement of this Act it shall not be competent for a court to make an award of punitive or exemplary damages in an action for libel or an action for slander or an action for defamation, whether any such action was brought before or after the commencement of this Act.

(3) Nothing in this section shall affect the award of aggravated compensatory damages.

Mitigation of damages.

19.—(1) In any action for defamation the defendant in mitigation of damages may give—

(*a*) any general or particular evidence which at the date of the hearing of the action has relevance to the charges contained in the matter published;

(*b*) evidence that the plaintiff has—

- (i) recovered damages, or brought an action for damages, for libel or slander or defamation in respect of the publication of charges to the same effect as the charges in respect of which the first-mentioned action is brought, or
- (ii) received or agreed to receive compensation in respect of any such publication.

(2) Any rule of law which limits the evidence which may be given in mitigation of damages by the defendant in an action for defamation to evidence relating to the general bad reputation of the plaintiff shall cease to have effect.

Action in Scotland without conclusion for damages or interdict.

20. It shall be competent in Scotland for an action for defamation to be brought for declarator that matter published is defamatory of the pursuer notwithstanding that there is in the action no conclusion for damages or interdict.

Effect of death on actions.

21.—(1) A cause of action in respect of defamation shall survive against the estate of the defendant in the action of the person who, if he had survived, would have been the defendant in the action.

(2) Where the plaintiff in an action for defamation dies prior to judgment, his personal representative shall be entitled to carry on the action and recover such damages as could have been recovered by the plaintiff.

(3) A cause of action in respect of defamation shall survive in favour of the personal representative of a person who has died without bringing an action for defamation, but the personal representative shall, in an action for defamation brought by him, be entitled to commence and carry on proceedings to the extent only of obtaining an injunction and compensation for actual or likely pecuniary damage suffered by the deceased or his estate as a result of the defamation.

Defamation of the dead.

22.—(1) Where, in relation to a person who has died (hereinafter in this section referred to as "the deceased") a person (hereinafter in this section referred to as "the publisher") publishes matter the publication of which would, if the deceased had not been dead, have constituted defamation, any of the surviving relatives of the deceased referred to in subsection (2) of this section shall, within the period of five years beginning with the date of death of the deceased, be entitled to bring proceedings against the publisher for—

(*a*) a declaration that the said matter published was untrue;

(*b*) an injunction for the remainder of the said period of five years;

(*c*) such an award of costs, if any, as to the court seems appropriate;

but not for damages.

(2) The relatives of the deceased referred to in this subsection are:—

(*a*) the spouse;

(*b*) descendants or ascendants in any degree of relationship;

(*c*) brothers and sisters and their descendants in any degree of relationship.

(3) If more than one of the relatives referred to in subsection (2) of this section bring proceedings as aforesaid, the proceedings shall be consolidated unless the court shall otherwise order.

(4) Where proceedings brought under this section have been carried through to judgment, no further proceedings may, without the leave of the court, be brought or continued under this section in respect of the said matter published.

Jury trials.

23.—(1) Upon application to the court to determine the mode of trial of an action for defamation, it shall be in the discretion of the court, in default of agreement between the parties, to determine whether the action be tried with or without a jury.

1925 c.49.

(2) Notwithstanding the provisions of section 31(1)(i) of the Supreme Court of Judicature (Consolidation) Act 1925, either party to an action for defamation may without leave appeal against a decision of the judge in chambers as to mode of trial.

Awards of damages in jury trials.

24.—(1) Subject to the provisions of section 31 of this Act (Consolidation of actions), where an action for defamation is tried by a judge with a jury, the jury shall determine whether or not the defendant is liable in damages to the plaintiff and, if so, whether the damages to be awarded are:—

(*a*) substantial;

(*b*) moderate;

(*c*) nominal; or

(*d*) contemptuous;

and the judge shall assess damages accordingly.

(2) Without prejudice to any other powers vested in it, the Court of Appeal shall, on appeal against an award of damages under subsection (1) of this section or section 31(2) of this Act, have power in all cases to increase or reduce such award or substitute its own award of damages.

25.—(1) At the end of the proviso to subsection (1) of section 2 of the Limitation Act 1939 (which subsection provides, among other things, that there shall be a limitation period of six years for actions founded on simple contract or on tort) the following proviso shall be inserted:—

Limitations of actions. 1939 c.21.

"Provided further that in the case of actions for defamation, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years."

(2) In the case of actions for defamation, section 22(1) of the said Act of 1939 (which extends the period of limitation in certain cases of disability) shall—

(*a*) have effect as if for the words "six years" there were substituted the words "three years;" and

(*b*) not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action accrued to him, in the custody of a parent.

(3) Where, because the plaintiff did not know the relevant facts, an action for defamation has not been brought within the period of three years mentioned in subsection (1) or (2) of this section, such an action may with the leave of the court and on notice to the proposed defendant be brought within the period of 12 months from the date on which the plaintiff acquired knowledge of such facts; and the court shall have absolute discretion in deciding whether or not to grant leave under this subsection.

(4) Nothing in this section shall affect any cause or right of action which accrued before the commencement of this Act.

26.—(1) No action for defamation shall be brought in Scotland unless it is commenced before the expiration of three years from the date when the right of action accrued.

Limitation of actions in Scotland.

(2) If on the date when any right of action accrued the person to whom it accrued was under legal disability by reason of nonage or unsoundness of mind and was not in the custody of a parent, the action for defamation may be brought at any time before the expiration of three years from the date when the person ceased to be under disability, notwithstanding that the period of limitation under subsection (1) of this section has expired.

For the purposes of this subsection, "parent" includes a step-parent and a grandparent and in deducing any relationship an illegitimate person and a person adopted in pursuance of any enactment shall be treated as the legitimate child of his mother or, as the case may be, of his adoptor.

(3) In this section, references to the date when a right of action accrued shall be construed as references to the date when the publication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.

(4) Nothing in this section shall affect any right of action which accrued before the commencement of this Act.

27.—(1) If an action for defamation has been struck out or dismissed, no further writ in respect of the same cause of action shall be issued without the leave of the court.

Striking-out and dismissal of actions.

(2) Where at any time the plaintiff in an action for defamation has not taken any step in the action for a period of 12 months, the action shall, on the application of the defendant, be dismissed for want of prosecution, unless the court on cause shown otherwise orders.

County court jurisdiction.
1959 c.22.

28.—(1) A county court shall have jurisdiction to hear and determine an action for defamation as it has jurisdiction by virtue of section 39 of the County Courts Act 1959 to hear and determine such actions as are referred to in that section; and the said section 39 shall accordingly have effect for the purposes of this section with the omission from paragraph (*c*) of the proviso to subsection (1) of the said section 39 of the words "libel, slander."

(2) A county court shall in an action for defamation have power to grant an injunction and a declaration, whether or not damages have been claimed in the action.

Legal aid.

29.—(1) Subject to the provisions of this section legal aid may be given—

(*a*) in connection with proceedings wholly or partly in respect of defamation; and

(*b*) for the avoidance of doubt in connection with proceedings for slander of goods, slander of title and malicious falsehood.

1974 c.4.

(2) Schedule 1 to the Legal Aid Act 1974 shall have effect for the purposes of this section subject to the omission of paragraph 1 from Part II of that Schedule.

Legal aid in Scotland.

30.—(1) Subject to the provisions of this section, legal aid may be given in Scotland in connection with proceedings wholly or partly in respect of defamation, *convicium* and verbal injury and such actions as are referred to in section 2(2) of this Act.

1967 c.43.

(2) Schedule 1 to the Legal Aid (Scotland) Act 1967 shall have effect for the purposes of this section subject to the omission of paragraph 1(*a*) from Part II of that Schedule.

Consolidation of actions.

31.—(1) It shall be competent for the court, upon an application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamation brought by one and the same person, to make an order for the consolidation of such actions, so that they shall be tried together; and after such order has been made, and before the trial of the said actions, the defendants in any new actions instituted in respect of the same, or substantially the same, defamation shall also be entitled to be joined in a common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

(2) Where actions which have been consolidated under this section are tried by a judge with a jury, then:—

(*a*) in respect of each such action, the jury shall make separate determinations in accordance with the provisions of section 24(1) of this Act as if the actions had not been consolidated; and (*b*) having regard to the said determinations, the judge shall—

(i) assess in one sum the total amount of damages to be awarded to the plaintiff in the consolidated actions; and

(ii) apportion the said sum between and against the defendants in the said actions.

(3) Where actions which have been consolidated under this section are tried by a judge without a jury, he shall assess in one sum the total amount of damages to be awarded to the plaintiff in the consolidated actions and apportion the said sum between and against the defendants in the said actions.

(4) If the judge awards to the plaintiff the costs of such consolidated actions, he shall thereupon make such order as he shall deem just for apportionment of such costs between and against the defendants.

(5) The provisions of this section shall apply to actions for malicious falsehood, slander of title and slander of goods as they apply to actions for defamation; and references in this section to defamation shall be construed accordingly.

(6) Nothing in this section shall affect the liability of joint tortfeasors inter se or to the plaintiff.

Agreements for indemnity.

32. An agreement for indemnifying any person against civil liability for defamation in respect of the publication of any matter shall not be unlawful, but such an agreement shall be unenforceable if at the time of publication that person knew that the matter was defamatory and did not reasonably believe that there was a good defence to any action brought in respect of it.

Limitation on privilege at elections.

33. A defamatory statement published by or on behalf of a candidate in any election to a local authority or to Parliament shall not be deemed to be published on a privileged occasion on the ground that it is material to a question in issue in the election, whether or not the person by whom it is published is qualified to vote at the election.

Criminal libel.

34.—(1) Liability for criminal libel shall extend to charges contained in matter published—

(*a*) by means of broadcasting; or

(*b*) in permanent form.

(2) The defence of comment and the defence of privilege (whether absolute or qualified) shall extend to a prosecution for criminal libel as they respectively extend to an action for defamation.

(3) Without prejudice to the provisions of the Newspaper Libel and Registration Act 1881, a court of summary jurisdiction shall, with the consent of the defendant, have power to hear and determine a prosecution for criminal libel and shall have power to impose on conviction a sentence of imprisonment for a period of not more than nine months or a fine not exceeding £500 or both. 1881 c.60.

(4) No prosecution for criminal libel shall, without the order of a judge in chambers being first applied for and obtained, be brought in respect of any matter appearing in a newspaper or periodical publication against any proprietor,

publisher, editor or other person responsible for the publication of such newspaper or periodical publication, or against any person who (whether or not employed by such proprietor) is paid to contribute matter to such newspaper or periodical publication; nor shall any prosecution for criminal libel be brought without such order in respect of any matter broadcast against the broadcasting authority concerned or against any person who (whether or not employed by such authority) is paid to present or contribute such matter.

(5) Any application for such an order as is mentioned in subsection (4) shall be made after notice to the person accused who shall have an opportunity of being heard against such application.

(6) The fact that an action for defamation has been brought or concluded against any person shall not be a bar to a prosecution of that person for criminal libel.

Interpretation.

35.—(1) In this Act (including Schedule 1 thereto), unless the context otherwise requires, the following expressions shall have the following meanings respectively assigned to them:—

"broadcasting" means broadcasting by means of wireless telegraphy from any broadcasting station within the United Kingdom licensed by the Secretary of State for Industry to provide broadcasting services for general reception and includes simultaneous transmission by telegraphy in accordance with a licence granted by the said Minister; and "broadcast programme" means a programme broadcast as aforesaid and includes all matter broadcast;

"the court", in relation to England and Wales, means the High Court or any one or more judges thereof, whether sitting in court or in chambers, or any master or, in the case of an action for defamation in the county court, the county court; and in relation to Scotland means the Court of Session or, if an action for defamation is depending in the sheriff court, the sheriff;

"existing" means existing immediately before the commencement of this Act;

"matter" includes words, pictures, recording tapes and other records, visual images, gestures and other methods of signifying meaning;

"newspaper" means any paper containing public news or observations thereon, or consisting wholly or mainly of advertisements, which is printed for sale and is published in the United Kingdom at intervals of not more than 36 days;

"publication" means publication by the defendant or his servant or agent in any manner and whether or not in permanent form; and "published" shall be construed accordingly;

"report" includes summary;

"words" includes pictures, recording tapes and other records, visual images, gestures and other methods of signifying meaning.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as amended, extended or applied by or under any other enactment including this Act.

Saving for rules of law.

36. Subject to the provisions of this Act, any enactment or rule of law or practice which immediately before the commencement of this Act applied to actions for libel or slander shall, in relation to actions for defamation brought after the commencement of this Act, apply as varied, modified or otherwise affected by this Act.

Proceedings affected and saving.

37. This Act applies for the purposes of any proceedings begun after the commencement of this Act, no matter when the cause of action arose, but, unless the context otherwise requires, does not affect any proceedings begun before the commencement of this Act.

Application of Act to Scotland.

38. In the application of this Act to Scotland, for any reference to libel, or to slander, or libel or slander, there shall be substituted a reference to defamation; the expression "plaintiff" means pursuer; the expression "defendant" means defender; the expression "cause of action" means "right of action"; the expression "costs" means "expenses"; the expression "security for costs" means "caution for expenses"; and for any reference to a defence of justification or a defence of truth there shall be substituted a reference to a defence of *veritas*.

Rules of court.

39.—(1) The power to make rules of court under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 and the power to make county court rules under section 102 of the County Courts Act 1959 shall each include power to make rules under this section for the purpose of giving effect to the provisions of this Act.

1925 c.49.
1959 c.22.

(2) The powers conferred on the Court of Session by section 16 of the Administration of Justice (Scotland) Act 1933 and section 32 of the Sheriff Courts (Scotland) Act 1971 shall include power to make rules under this section for the purpose of giving effect to the provisions of this Act.

1933 c.41.
1971 c.58.

(3) Any rules made under this section may include such incidental, supplementary and consequential provisions as the authority making the rules may consider necessary or expedient.

Repeals.

40. The enactments set out in Schedule 2 to this Act are hereby repealed to the extent specified in relation thereto in column 3 of that Schedule.

Short title, commencement and extent.

41.—(1) This Act may be cited as the Defamation Act 1975.

(2) This Act shall come into operation one month after the passing of this Act.

(3) Sections 1, 2(1), 3, 4(1), 17(1), 18, 21 to 25, 27 to 29, 31, 34 and 39(1) of this Act shall not extend to Scotland, and sections 2(2), 17(2), 20, 26, 30, 38 and 39(2) of this Act shall extend to Scotland only.

(4) This Act shall not extend to Northern Ireland.

SCHEDULE 1

SPECIAL CATEGORIES OF REPORTS AND STATEMENTS HAVING QUALIFIED PRIVILEGE

PART I

REPORTS AND STATEMENTS PRIVILEGED WITHOUT EXPLANATION OR CONTRADICTION

1. A fair and accurate report of any proceedings in public of the European Parliament or of the legislature of any Commonwealth country, any member State of the European Communities, the Channel Islands or the Isle of Man.

2.—(*a*) A fair and accurate report of any proceedings in public of an international organisation of which the United Kingdom or Her Majesty's Government in the United Kingdom is a member, or of any international conference to which that Government sends a representative.

(*b*) A fair and accurate report of the proceedings or reports of any international organisation or agency carrying out functions under the United Nations Organisation.

3. A fair and accurate report of any proceedings in public of:—

(*a*) an international court;

(*b*) the Court of Justice of the European Communities;

(*c*) the European Commission of Human Rights.

4. A fair and accurate report of any proceedings in public before:—

(*a*) a court (including a court-martial and a tribunal or inquiry recognised by law and exercising judicial functions) in any part of the United Kingdom, or in the Channel Islands or the Isle of Man, when such report is not protected by absolute privilege under section 6 of the Act;

(*b*) a court, including a court-martial, in any Commonwealth country or member State of the European Communities (other than the United Kingdom);

(c) a court-martial held outside the United Kingdom under the Naval Discipline Act 1957, the Army Act 1955, or the Air Force Act 1955.

5. A fair and accurate report of any proceedings in public of a body or person appointed to hold a public inquiry by:—

(*a*) the European Parliament;

(*b*) the Commission of the European Communities;

(*c*) the government or legislature of any Commonwealth country, any member State of the European Communities, the Channel Islands or the Isle of Man.

6. A fair and accurate copy or extract from any register kept in pursuance of any Act of Parliament which is open to inspection by the public, or of any other document which is required by the law of any part of the United Kingdom to be open to inspection by the public.

7. A fair and accurate report of;—

(*a*) a Command Paper

(*b*) any publication issued by or under the authority of:—

- (i) the European Parliament
- (ii) the Commision of the European Communities
- (iii) the Government or legislature of any Commonwealth country or member state of the European Communities.

8. A notice or advertisement published by or on the authority of any court in the United Kingdom or any judge or officer of such a court.

9. A notice or advertisement published in the United Kingdom by or on the authority of a duly constituted court in any Commonwealth country (other than the United Kingdom), the Channel Islands, the Isle of Man or any foreign State recognised by Her Majesty's Government in the United Kingdom.

10. A letter or statement by way of explanation or contradiction published in compliance with section 8(2) of this Act.

PART II

REPORTS AND STATEMENTS PRIVILEGED SUBJECT TO EXPLANATION OR CONTRADICTION

11. A fair and accurate report of the findings or decisions of any of the following associations, or of any committee or governing body thereof, that is to say:—

(*a*) an association formed in the United Kingdom for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;

(*b*) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;

(*c*) an association formed in the United Kingdom for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;

(*d*) an association formed in the United Kingdom for the purpose of promoting a charitable object or other objects beneficial to the community and empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the association or the actions or conduct of any persons subject to such control or adjudication.

12.—(*a*) A fair and accurate report of the proceedings at any public meeting held in the United Kingdom, that is to say, a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted.

(*b*) A fair and accurate report of any press conference held in the United Kingdom convened to inform the press or other media of a matter of public concern.

(*c*) A fair and accurate report of any such public meeting or press conference may include a fair and accurate report of any document circulated at the public meeting or press conference to the persons lawfully admitted thereto.

13. A fair and accurate report of the proceedings at any meeting or sitting in any part of the United Kingdom of:—

(*a*) any local authority or committee of a local authority or local authorities;

(*b*) any justice or justices of the peace sitting otherwise than as a court exercising judicial authority;

(*c*) any commission, tribunal, committee or person appointed for the purposes of any inquiry by Act of Parliament, by Her Majesty, or by a Minister of the Crown;

(*d*) any person appointed by a local authority to hold a local inquiry in pursuance of any Act of Parliament;

(*e*) any other tribunal, board, committee or body constituted by or under, and exercising functions under an Act of Parliament;

not being a meeting or sitting admission to which is denied to representatives of publishers of newspapers or broadcast programmes and to other members of the public.

14.—(*a*) A fair and accurate report of the proceedings at a general meeting of any corporation or association constituted, registered or certified by or under any Act of Parliament or incorporated by Royal Charter, not being a private company within the meaning of the Companies Act 1948.

(*b*) A fair and accurate report of any report or other document circulated to stockholders, shareholders or members by or with the authority of the board of any corporation or association constituted, registered or certified as aforesaid, not being a private company.

(*c*) A fair and accurate report of any document relating to the appointment, resignation, retirement or dismissal of directors circulated to stockholders, shareholders or members of any corporation or association constituted, registered or certified as aforesaid not being a private company.

(*d*) A fair and accurate report of any document circulated by the auditors to stockholders, shareholders or members of any corporation or association constituted, registered or certified as aforesaid not being a private company.

15. A fair and accurate report of any adjudication, official report, statement or notice issued by:—

(*a*) the Panel on Take-overs and Mergers;

(*b*) the Council of the Stock Exchange;

(*c*) the Press Council;

(*d*) the British Broadcasting Corporation Complaints Committee;

(*e*) the Independent Broadcasting Authority Broadcasting Panel;

(*f*) a district auditor;

(*g*) the Parliamentary Commissioner for Administration and any other Commissioner for Administration appointed by or under any enactment.

16. Any information made available officially from court documents in criminal cases.

17. A fair and accurate report of any official notice or other matter (including photographs, sketches or other pictorial representations) issued for the information of the public by or on behalf of any government department, officer of state, public or local authority, nationalised industry, serving officer or Her Majesty's Armed Forces, or a chief officer of police of the United Kingdom.

18.—(*a*) A fair and accurate report of any proceedings in public before a foreign court duly constituted by the de facto or effective government of the State in which such court exercises jurisdiction, such State not being a member State of the European Communities.

(*b*) A fair and accurate report of any proceedings in public of the legislature of a foreign State which is not a member State of the European Communities.

(*c*) A fair and accurate report of any publication issued by or under the authority of the government or legislature of any foreign State which is not a member of the European Communities.

PART III

INTERPRETATION

19. In this Schedule the following expressions have the meanings hereby respectively assigned to them:—

"Act of Parliament" includes an Act of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly; and the reference to the Companies Act 1948 includes a reference to any corresponding enactment of the Parliament of Northern Ireland or Northern Ireland Assembly;

"Commonwealth country" means the United Kingdom, any of the countries mentioned in section 1(3) of the British Nationality Act 1948, any colony or any territory under Her Majesty's protection;

"government department" includes a department of the Government of Northern Ireland;

"international court" means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;

"legislature", in relation to any country or State which is subject to a central and a local legislature, means either of those legislatures;

"local authority" means any authority or body to which the Public Bodies (Admission to Meetings) Act 1960, or the Local Government (Ireland) Act 1902 as amended by any enactment of the Parliament of Northern Ireland or Northern Ireland Assembly, applies. 1902 c. 38

SCHEDULE 2

Section 40.

ENACTMENTS REPEALED

Chapter	*Title or short title*	*Extent of repeal*
3 & 4 Vict. c.9.	The Parliamentary Papers Act 1840.	Section 3.
6 & 7 Vict. c.96	The Libel Act 1843 (Lord Campbell's Act)	Sections 1 and 2
8 & 9 Vict. c.75.	The Libel Act 1845.	Section 2
51 & 52 Vict. c.64.	The Law of Libel Amendment Act 1888.	Sections 3, 5 and 8.
54 & 55 Vict. c.51.	The Slander of Women Act 1891.	The whole Act.
23 & 24 Geo. 5. c.36.	The Administration of Justice (Miscellaneous Provisions) Act 1933.	In section 6(1)(*b*), the words "libel, slander".
15 & 16 Geo. 6 and 1 Eliz. 2, c.22.	The Defamation Act 1952.	The whole Act.
7 & 8 Eliz. 2. c.22.	The County Courts Act 1959.	In section 39(1), in paragraph (*c*) of the proviso, the words "libel, slander". In section 94(*3*)(*b*), the words "libel, slander".
1967 c.43.	The Legal Aid (Scotland) Act 1967.	In Schedule 1, paragraph 1(*a*) of Part II.
1968 c.54.	The Theatres Act 1968.	Section 4.
1974 c.4.	Legal Aid Act 1974.	In Schedule 1, paragraph 1 of Part II.

Appendix I

COMPARISON OF PRIVILEGED REPORTS

The following table compares reports privileged under the *Libel and Slander Act* of B.C., the *Defamation Act, 1952* (U.K.), and the *Uniform Defamation Act*. Changes to the *Defamation Act, 1952* (U.K.) proposed in the Revised Schedule in Appendix XI of the *Faulks Report* are noted following the references to the 1952 Act.

Proceeding Reported	*Nature of Statutory Privileges*		
	Libel and Slander Act (B.C.)	*1952 Defamation Act (U.K.) Faulks Report*	*Uniform Act Canada*
1. Parliamentary Proceedings	Committees of B.C. Legislature only, s. 4(1)	Commonwealth Legislatures, Sch. I(1)/Faulks, I(1), II(18)	Parliament, all Legislatures, and Committees of any of them s. 10(1)
2. Commissioners	Probably only those authorized by B.C. law, s. 4(1)	(a) Overseas Commonwealth, Sch. I(5) (b) All domestic inquiries, Sch. II(10)(c)/Faulks, I(5)(a) and (c)	Under any lawful warrant or authority, s. 10(1)(d)
3. Domestic	s. 3	s. 8/Faulks, I(4)(a), II(16)	s. 11
4. "Overseas" Courts	—	Commonwealth Courts exercising jurisdiction outside U.K. and Courts Martial held outside U.K., Sch. I(4)/Faulks I(4)(b) and II(18)	—
5. International Organizations and Courts	—	(a) Any International Organization if U.K. is a member or is represented, Sch. I(2) (b) Any International Court, Sch. I(3)/Faulks I(2)(b), and I(5)(a) and (c)	—
6. Public	s. 4(1)	Held in U.K., Sch. II(9)/ Faulks, II(12)(b) and (c)	s. 10(1)
7. Meetings of Local Authorities	B.C. Municipal councils, school boards and other local authorities and committees, s. 4(1)	All U.K. local authorities and committees, Sch. II(10)(a)/Faulks, II(15)	All such bodies under federal or provincial legislation and committees, s. 10(1)(e)
8. Registers	—	Extract from any public Register kept under an Act, Sch. I(6)	—
9. Official Notices and Reports	If published at request of (probably B.C.) ministry or "public officer", s. 4(1)	(a) If published by or on authority of U.K. Court or its officer, Sch. I(7) (b) If issued by government department, officer local authority or police chief (includes summary), Sch. II(12)/Faulks I(7) and (9), and II(17)	If published at request of any government department officer for public information, s. 10(2)
10. Disciplinary Bodies	—	Finding of certain U.K. associations relating to persons subject to their control; extends to art, science, religion, trades, professions, businesses and sports, Sch. II(8)/ Faulks, II(11)	—

Proceeding Reported	*Nature of Statutory Privileges*		
	Libel and Slander Act (B.C.)	*1952 Defamation Act (U.K.) Faulks Report*	*Uniform Act Canada*
11. Administrative Tribunals	—	Any commission, tribunal appointed by any Act, Order in Council or Minister, Sch. II(10)(c) and (e)/Faulks, II(13)	—
12. Companies and Associations	—	General Meetings of public companies and associations created under Act or by Charter, Sch. II(11)/ Faulks, II(14)	—

Queen's Printer for British Columbia ©
Victoria, 1985